

Durham

North Carolina

LANDLORD TRAINING

PROGRAM MANUAL

**A PRACTICAL GUIDE FOR KEEPING ILLEGAL ACTIVITY OUT
OF PRIVATELY-OWNED RENTAL PROPERTY**

Sponsored by:

The City of Durham
Department of Neighborhood Improvement Services
& Human Relations Department

In partnership with
Durham Police Department
Solid Waste Management Department
Community Development Department
City/County Planning and Zoning Department
Public Works (Stormwater Services Division)
Water Management

Housing Authority of the City of Durham
Legal Aid of North Carolina, Inc.

Second Edition

**Adapted with permission from the original Landlord Training Program,
developed by Campbell DeLong Resources, Inc.**

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Various parts of this document provide broad descriptions of legal procedure. However, **no part of this manual should be regarded as legal advice or considered a replacement of a landlord's responsibility to be familiar with federal, state, and local law governing a particular situation.** If you need legal advice, seek the services of a competent attorney.

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Note: This manual addresses aspects of property management that may help control or prevent illegal activity on rental property. We have not attempted to address all issues with which landlords should be familiar. Also, while we have attempted to ensure the material is consistent with federal, state, and local law current at the time of publication, the law is constantly changing. We urge landlords and property managers to keep informed of changes in the law and the evolution of techniques.

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POINTS TO CONSIDER

KNOW YOUR LOCAL LANDLORD/TENANT LAW

Landlord/Tenant law balances the rights of rental property owners to control, protect and benefit from their investments and the rights of rental property residents (residents) to control, protect and enjoy their private homes. Unfortunately, the balancing act results in some dissatisfaction on both sides. There are those who believe the law is “stacked against the landlord” and others who believe with equal fervor that the law is unfair to residents.

We have found - on both sides - a surprising level of misinformation and misunderstanding. It is important to be well informed on the law and your rights. If you need legal assistance, find an attorney who specializes in Landlord/Tenant issues and read a copy of your local Landlord/Tenant statutes. Go to www.ncleg.net to view the North Carolina General Statute Chapter 42 for Landlord/Tenant law general citations.

Remember that your best chance for a fair application of Landlord/Tenant law comes with a complete knowledge of it.

COSTS AND BENEFITS

Community-oriented property management is also good business.

Landlords and property managers who apply the active property management principles presented in this manual, and in the accompanying training, have consistently seen improvements in the quality of their rental business. Applying the information presented in this training can result in significant benefits to each of the three interest groups in a residential neighborhood - whole communities can become safer, residents can enjoy better housing and landlords can enjoy greater business success. Here's how it works:

Costs of Drug-Related Activity in Rentals

When drug criminals operate out of rental property, neighborhoods suffer and landlords pay a high price. That price may include:

1. Declines in property values - particularly when the activity begins affecting the reputation of the neighborhood.
2. Property damage arising from abuse, retaliation, or neglect.
3. Toxic contamination and/or fire resulting from drug manufacturing or drug growing operations.
4. Potential loss of property resulting from drug activity.
5. Loss of rent during the eviction and repair periods.
6. The fear and frustration of dealing with dangerous residents.
7. Increased resentment and anger between neighbors and property managers.

8. Loss of good residents and difficulty in attracting good, new residents.

Benefits of Active Management

Active management can prevent much of the rental-based drug crime occurring today. Developing an active management style requires a commitment to establishing a new approach. Landlords and managers interviewed for this program, who have made the switch to more active management, consistently report these rewards:

1. A stable, more satisfied resident base.
2. Increased demand for rental units - particularly for multi-family units that have a reputation for active management.
3. Lower maintenance and repair costs.
4. Improved property values.
5. Improved personal safety for residents, landlords and managers.
6. Peace of mind that comes from spending more time on routine management and less on crisis control.
7. Appreciative neighbors.

Chapter 1: PREPARING THE PROPERTY

Make the environment part of the solution.

Unless noted, quotes are from landlords or professional property managers.

Note that some "complaints" contain inaccurate assumptions about legal rights or procedure.

ADVICE WE WERE GIVEN:

"Drug dealers can set up anywhere, but the farther they are from the manager's office or the more hidden the house is from view, the better they like it. Drug dealers can always find a place to set up business where neighbors won't call police and managers don't visit their property."

— *Police Officer*

This manual is intended as a guide to community-oriented property management. It should not be regarded as legal advice.

If you need legal advice, contact a skilled Landlord/Tenant attorney.

Chapter 1: PREPARING THE PROPERTY

Make the environment part of the solution.

THE BASICS

Make sure the aesthetic and physical nature of the property is attractive to honest renters and unattractive to dishonest ones.

KEEP THE PROPERTY UP TO HABITABILITY STANDARDS

Maintaining housing standards is important to the public welfare and it protects against neighborhood decay. A substandard rental home is more likely to attract drug criminals; it announces to potential criminals that the landlord's standards are low and that inappropriate resident behavior is likely to be overlooked.

Eviction of a problem resident from a poorly maintained rental property can be both time consuming and expensive. Landlord/Tenant law generally protects residents from retaliation if the resident complains that the landlord has not complied with minimum housing standards. If a landlord attempts to evict a problem resident from a substandard unit, a court may be confronted with having to weigh the behavior of a problem resident against that of a problem landlord. In effect, landlords who fail to meet their responsibilities under the law may find that they have compromised their rights under the law as well.

Before renting, make sure your property meets applicable the local housing code and the habitability requirements of your local Landlord/Tenant law. Durham's Housing Code can be found online at . If you rent to Section 8 voucher holders, you must comply with the U.S. Department of Housing and Urban Development (HUD) standards for "decent, safe, and sanitary" housing, which can be found on HUD's website in Chapter 10 (Housing Quality Standards) at <http://www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm>. For a general discussion of basic requirements, see the chapter on *Ongoing Management*.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN: "CPTED" DEFINED

Crime Prevention through Environmental Design, known as CPTED (pronounced "Sep Ted"), is a field of knowledge developed in response to research demonstrating that the architecture of some buildings deters crime while that of others encourages it. These concepts were originally designed to help reduce crime *to* a property (e.g., a burglar breaking in). They are now known also to help prevent crime *from* a property (e.g. drug dealing, drug manufacturing, illegal gang activity).

Essentially, it is important that lighting, landscaping, and building design combine to create an environment where drug dealers, burglars, and other criminals don't feel comfortable. How these concepts are best applied in a given property depends on many factors, including the existing landscaping, building architecture, availability of resident managers, management practices, presence

of security personnel, desires of law abiding residents, and more. Basic steps include making it difficult to break in, closing off likely escape routes, and making sure public areas can be easily observed by nearby people as they go about their normal activity.

The four basic elements of CPTED are:¹

☒ **Natural Surveillance.** The ability to look into and out of your property.

Crime is less likely to happen if criminals feel they will be observed. Examples: Keep shrubs trimmed to a maximum height of three feet, so they don't block the view of windows or porches. They should also be trimmed in the shape of a wedge with the point of the wedge going toward the base of the plant. Install glass peepholes so children and adults can see who is at the door *before* they open it. Prune tree branches that hang below six feet. Install low-energy-usage outdoor lighting along the paths. Install motion-activated lights in private areas such as driveways. Consider indirect lighting during the day; leave porch lights on at night.

☒ **Access Control.** Controlling entry and exit.

Crime is less likely to happen if the criminal feels it will be hard to get in or that escape routes are blocked. Examples range from something as simple as a locked door, a 24-hour guard station, or a remote-activated gate. This also applies to individual apartments, such as deadbolt locks, security pins in windows and sliding-glass doors. In high rise apartments, the "buzzer" for opening the front door from inside an apartment is an access control device.

☒ **Territoriality.** Making a psychological impression that someone cares about the property and will engage in its defense.

Conveying territoriality is accomplished by posting signs, general cleanliness, high maintenance standards, and residents who politely question strangers. Signs that tell visitors to "report to the manager," define rules of conduct, warn against trespassing, or merely announce neighborhood boundaries are all part of asserting territoriality. Cleaning off graffiti the very next day if possible, or no later than within 48 hours, or painting a mural on a blank wall both send a message that minor crime won't be overlooked. Before cleaning off graffiti, you should contact the Durham Police Department Gang Unit through Durham One Call at 560-1200 to report the gang graffiti. Trained observers can gather valuable intelligence by examining and interpreting the graffiti.

☒ **Activity Support.** Increasing the presence of law-abiding citizens can decrease the opportunities for criminals and crime.

Organizing events or improving public services in parks and school yards, holding outdoor gatherings on hot summer nights, and accommodating bicycles, joggers, and fitness walkers are all examples.

¹ Although research on CPTED goes back decades, the description given here is based on information provided by the Tucson, Arizona Police Department's "Safe By Design" program.

CPTED principles can be applied to existing premises and are particularly important in the planning stages of new housing facilities. The footprint of the structure can enhance CPTED principles and “target harden” the property or, if ignored, can create a safe haven for crimes and unwanted behavior to occur.

KEEP THE PROPERTY VISIBLE AND CONTROL ACCESS

The following are some recommended “first steps” for making “CPTED” changes to rental property. Taken alone, few of the following elements will have a significant impact. Taken together, they will stop some operators from wanting to move into the property, and will make it easier for neighbors (or surveillance teams) to observe and document illegal activity should it start up.

These “first steps” include:

- ☑ **Use lighting to its best advantage.** Install photosensitive lighting over all entrances. Buyers, sellers, and manufacturers of illegal drugs don't like to be seen. At a minimum, the front door, back door, and other outside entrance points should be equipped with energy-efficient flood lighting that is either motion or light sensitive - made to go on for a few minutes when a person approaches or to go on at sunset and stay on till dawn. Backyards and other areas should also be illuminated as appropriate. While lights should illuminate the entrances and surrounding grounds, they should not shine harshly into windows - either yours or the next-door neighbor's. Be sure applicants understand that the lighting is part of the cost of renting - that it must be left on.

In apartment communities, make sure that all walkways, activity areas, and parking lots are well lighted, especially along the property perimeter. Covered parking areas should have lighting installed under the canopy. All fixtures should be of vandal-resistant design. Landscape planning should take into account how future plant growth will impact lighting patterns.

- ☑ **Make sure fences do not obstruct view.** If you install fencing, chain link or wrought iron types are best because they limit access without also offering a place to hide. Wood fencing can also be used effectively, provided wide gaps are left between the boards. In some cases you might also consider a lower fence height - for example, four feet high instead of six. Consider replacing or modifying wood fences that have minimal gaps between boards. Remember to keep hedges trimmed low to avoid obstructing the view into or out of your property.
- ☑ **Keep bushes around windows and doorways well trimmed.** Bushes should not impair the view of entrances and windows. Tree branches should also be trimmed up from the ground so as to discourage the possibility of a person hiding. Also, consider planting prickly bushes under ground floor windows for added protection.
- ☑ **Post the address clearly.** Only the drug operator will benefit if the address is difficult to read from the street. When address numbers are faded, hidden by shrubs, not illuminated at night, or have simply fallen off, neighbors will have one more hurdle to cross before reporting activity and police and other emergency service providers will have more difficulty finding the property when called.

Large apartment communities should have a permanent map of the complex, including a “you are here” point of reference, at each driveway entrance. These maps should be well lighted and clearly visible in all weather. If the complex consists of multiple buildings, make sure building numbers

can be read easily from any adjacent parking area, both day and night. Also, make sure that rental units are numbered in a logical and consistent manner to make it possible for officers and other emergency service providers to locate the property as rapidly as possible if called to it.

- ☑ **Control traffic flow and access.** In larger housing communities, control access points to deter pedestrian and vehicular traffic from entering the property. People involved in drug activity prefer “drive through” parking lots - those with multiple exits. Consider blocking some parking exits, adding fencing, and rerouting traffic so all automobile *and* foot traffic, coming and going, must pass the same point - within view of the manager’s office.

If more control is needed, issue parking permits to residents. Post signs forbidding cars without permits to use the lot. Towing companies that specialize in this type of business can provide you with signs, usually for a nominal setup fee. Depending on the availability of street parking for guests, either deny guest parking altogether or limit it to specific spaces. Be consistent in having violators towed away. Remember, it is *your* parking lot, not a public one.

- ☑ **Before building, design for a strong sense of community.** Each of the other steps described in this section should be integrated into building plans to help design a safer rental home from the start. In addition, for apartment communities in particular, building plans should include design elements that will help foster a sense of community. Recreational areas and other community facilities can help encourage neighbors to become acquainted. Building layouts should nurture more personalized, neighborhood environments over those that may reinforce feelings of isolation and separation from the community.

KEEP IT LOOKING CARED FOR

Housing that looks cared for will not only attract good residents, but it will also *discourage* many who are involved in illegal activity. Changes to the property that help communicate “safe, quiet, and clean” may further protect the premises from those who want to rent a place where chronic problem activity might be tolerated. While these approaches are useful in any type of rental, because of the day-to-day control that apartment owners have over the common areas of their property, the following approaches can make a particularly strong difference in multi-family communities:

- ☑ **Remove graffiti immediately.** Graffiti may be the random work of a juvenile delinquent or the work of a gang member marking territory. Regardless, it serves as an invitation for more problems and it can demoralize and intimidate a neighborhood. If you believe graffiti may be gang related, call the Durham Police Department or your local law enforcement agency. After the police have had an opportunity to view the graffiti, then quickly remove the graffiti or paint over it. Do not let graffiti create an eyesore on your property. The goal is to remove the graffiti within 48 hours.
- ☑ **Repair vandalism.** As with graffiti, an important part of discouraging vandalism is to repair the problem fast. If the vandalism appears to be directed against you or your residents, the police should be advised immediately and additional approaches discussed to addressing the situation.

Keep the exterior looking clean and fresh. Fresh paint, well-tended garden strips, and litter-free grounds help communicate that the property is maintained by someone who cares about what happens there.

Chapter 2: APPLICANT SCREENING

“An ounce of prevention...”

Unless noted, quotes are from landlords or professional property managers.

Note that some “complaints” contain inaccurate assumptions about legal rights or procedure.

COMPLAINTS WE HAVE HEARD:

“People say you should screen your residents. You can’t. The applicants lie about their previous landlord - they give you a fake address and the phone number of their brother. You call up the brother, he plays along and you never discover they were evicted at the last two houses they rented.”

“I thought I was calling the previous landlord and it was the applicant’s parents - and the parents played along. It ended up in eviction, some months later.”

“We can’t screen residents worth anything. If you don’t do it right, you could be sued for discrimination. So you check to see if they have income and that’s it.”

ADVICE WE WERE GIVEN:

“I went to a meeting for landlords about these issues. I was surprised - most people in the room couldn’t understand why they were getting bad residents. They just couldn’t see that there are ways to keep that from happening.”

“Most landlords, even some ‘pros,’ are still practicing the old way of doing things - they take a social security number, make one phone call, and rent to the person. Then they wonder where the problems are coming from. Well the old methods don’t work anymore.”

“I’ve just quit relying on character judgment. For managing rental property, it doesn’t work. I have a set application process, written down. Applicants must meet all the criteria. If they do, I rent to them. If they don’t, I don’t. It is simple, legal, and fair. At this point, every one of my properties has good people in it.”

“Many landlords are frightened of the fair housing laws. Some believe they can’t screen at all. If landlords establish a fair screening procedure and follow it equally for each applicant, they will have a very strong case against discrimination lawsuits.”

“When I call previous landlords to verify an applicant’s record, most are surprised to get a screening call from another landlord - apparently it happens too rarely.”

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If you need legal advice, contact a skilled landlord/tenant attorney

Chapter 2: APPLICANT SCREENING

“An ounce of prevention...”

THE BASICS

Attract honest residents, while discouraging dishonest applicants from applying. Have a backup system to help discover if a dishonest person has applied. Use a process that is legal, simple and fair.

At every step during the application process, reinforce the message that you are an active manager committed to providing honest residents with good housing and keeping dishonest residents out.

Establish *written* resident selection criteria. Communicate those criteria to the applicant. Communicate your commitment to complete the applicant screening process. Specifically state in the written application that you will deny the application if any of the information they provided was false.

Thoroughly screen *each* applicant. Most landlords do not screen applicants and most future problems could have been avoided at this stage. At a minimum, check their photo ID, run a credit check, *independently* identify previous landlords, and verify income.

Don't cut corners - follow through on every step. Don't believe it won't happen to you. Don't trust an innocent-looking face and don't accept applicants just because your “gut” says they're okay.

Apply your resident selection rules and procedures *equally to every applicant*.

Learn the warning signs of dishonest applicants.

OVERVIEW

There are two ways to screen out potentially troublesome residents:

Encourage self-screening. Set up situations that discourage those who are dishonest from applying. Every drug dealer who chooses not to apply is one more you don't have to investigate.

Uncover past behavior. More often than not, a thorough background check will reveal poor references, an inconsistent credit rating, or falsehoods recorded on the application.

The goal is to weed out applicants planning illegal behavior as early as possible. It will save you time, money, and all the entanglements of getting into a legal contract with people who may damage your property and harm the neighborhood.

For the following steps to be most effective, it is just as important that applicants actually read and understand the rules and the process as it is that you implement the process in the first place. Implementing elements of the following suggestions may help you protect yourself legally. Making sure that an applicant knows your commitment to the process may help prevent problems before they have a chance to grow.

A word of caution: If you are looking for a one-step solution, you won't find it here. There are no "magic" phone numbers you can call to get perfect information about applicants and their backgrounds. Effective property management requires adopting an approach and attitude that will discourage illegal behavior, while encouraging the stabilization, and then growth of your honest resident base. What makes the following process so effective is not any one step, but the cumulative value of the approach.

APPLICANT SCREENING, CIVIL RIGHTS AND FAIR HOUSING

Landlords are sometimes confused over how much right they have to turn down applicants. A few even believe that civil rights laws require them to accept virtually *any* applicant. This is not the case.

Civil rights laws are designed to protect the way applicants are screened and to make sure that all qualified applicants feel equally invited to apply. **Federal fair housing guidelines prohibit discrimination of housing applicants based on race, color, religion, sex (gender), national origin, disability (handicapping condition), or familial status (e.g., having children, being pregnant).** North Carolina law adheres to the same fair housing guidelines as the federal government and does not add any categories to the federal list of protected classes of people. The purpose of these laws is to prevent discrimination on the basis of a person's membership in a protected class. Nothing in the law forbids you from setting fair screening guidelines and **applying them equally to all applicants.**

Keep in mind that *every* person belongs to these various classes - each of us can be defined in terms of our race, color, sex, national origin, familial status, handicapped status, etc. So *any* time you deny an applicant, you have, in a sense, denied someone who belongs to a protected class. The question is whether or not you treat applicants or residents adversely *because* of the class to which they belong. If the criteria you set are blind to class issues, and you apply them consistently, you may turn down applicants who do not measure up.

The key lies in making sure your process is fair - that it neither directly nor indirectly discriminates on the basis of one of the federally defined classes or other classes that may also be protected in your community. To comply, you should design a fair process *and* apply it consistently and equally to all applicants. The following examples are consistent with federal fair housing guidelines:

You may have a rule that requires all applicants to show a photo ID and you could turn down applicants who cannot produce a photo ID. The practice becomes illegal when you apply the rule inconsistently - requiring ID from people of one class but not from those of another.

You could give a document to all applicants that outlines rules of the rental home and community and warns against selling drugs on the property. The practice becomes illegal when you hand it to applicants of one class, but not of another. Should you develop such a document, also make sure the wording used does not discourage members of a protected class from applying. It is a good idea to have all documents reviewed by your attorney.

You could refuse to rent to anyone who lies to you during the application process or provides false information on the application. This is both legal and highly appropriate.

You could require all applicants who say they intend to park a vehicle on your property to show current car registration, proof of insurance, and a valid driver's license along with their completed rental application. You could deny tenancy to those who wish to have a car on the property without showing such documentation. Of course, if the person does not plan to keep a car, the requirement would be waived.

There is nothing illegal about setting fair criteria and holding all applicants to the same standards. By the consistent use of such guidelines you can retain full and appropriate control over who lives in your rental units and who does not.

Finally, as you study the letter of the law, keep its spirit in mind as well. The sooner we remove the types of discrimination that weaken our communities, the sooner we can build a stronger, more equitable society.

WRITTEN RESIDENT CRITERIA: WHAT TO POST

Many of the attorneys and legislative authorities interviewed for this program recommend developing written rental criteria and posting a copy of those criteria in your rental office. If you do not have a rental office that all applicants visit, they suggest attaching a copy of the criteria to *every* application you give out.

If you are going to use written criteria, remember to have applicants read or have the document read to the applicant. Posting information alone is of limited prevention value unless applicants know it is there. You should consider making tape recordings of your written criteria available.

The following is intended as a "generic" example of information a manager might post and direct each applicant to read. The intent is to encourage every honest resident to apply, while providing dishonest applicants with an early incentive to seek housing elsewhere. *Every drug dealer who doesn't apply is one more you don't have to deal with.*

By itself, this information will scare off only a few people involved in illegal activity. Most have heard tough talk before. Many expect landlords to be too interested in collecting rent to care about applicant screening. It is important to follow through in word and action - continually reinforce the point that you enjoy helping honest residents find good housing by carefully screening all applicants, and *then actually screen them.*

While we have attempted to make sure the following section adheres to the goals of fair housing and civil rights guidelines, this is not intended to replace your responsibility to understand the law and to follow it. Further, complying with federal and local civil rights laws involves much more than the language used in the applicant screening process. If you are not familiar with your fair housing responsibilities, seek information from a local rental housing association or from an attorney who specializes in the subject.

The following is only an example intended to show various types of rules that might be set forth. You should adjust the criteria as appropriate for your own needs. Whatever criteria you set, have them reviewed by an attorney familiar with current Landlord/Tenant issues before you post them.

WRITTEN RESIDENT CRITERIA: USE IN APPLICATION PROCESS

Application Process Introduction

Here it is important to “set the tone” for your applicants - make sure that “good” applicants (law-abiding persons who will live responsibly in your property) want to apply and that “bad” applicants (those who want to take advantage of or create a nuisance on your property) may begin to think twice. A sample written applicant screening process and criteria can be found in the *Appendix*. Here’s one approach:

We are working with neighbors and other landlords in this area to maintain the quality of the neighborhood. We want to make sure that people do not use rental units for illegal activity. To that end, we have a thorough screening process.

If you meet the application criteria and are accepted, you will have the peace of mind of knowing that other renters in this area [or apartment community] are being screened with equal care, and as a result, there may be a reduced risk of illegal activity occurring in the area.

Please review our list of criteria. If you feel you meet the criteria, please apply. Please note that we provide equal housing opportunity. We do not discriminate on the basis of race, color, religion, sex, handicap, national origin, or familial status.

Applicant Screening Criteria

A complete application. *One for each adult (18 years of age or older). If a line isn’t filled in, or the omission explained satisfactorily, your application is incomplete and we will return it to you.*

This criterion helps to make sure that every application has enough information for you to make an informed decision. One of the simpler methods for hiding one’s financial history is to “forget” to fill in one’s social security number or date of birth on the application form. Without a name, social security number, and date of birth, credit checks cannot be run. To the person contemplating illegal activity, this requirement will communicate a very basic message - that you will actually screen your applicants. That message alone will turn away some.

This rule also allows you to receive an application from *each* roommate and not just the one with the good rental history. People involved in illegal activity may have friends and roommates who still have clean credit or a good rental history. The obvious approach for such people is to have the person with the good rental history apply and then follow that person into the unit. You have a right to know who is planning to live in the unit, so require an application and verify the information for each person.

Rental history verifiable from unbiased sources. *If you are related by blood or marriage to one of the previous landlords listed, or your rental history does not include at least two previous landlords, we will require: a qualified co-signer on your rental agreement (qualified co-signers must meet all applicant screening criteria) or an additional security deposit of \times amount. It is your responsibility to provide us with the information necessary to contact your past landlords. We reserve the right to deny your application if, after making a good faith effort, we are unable to verify your rental history. If you owned - rather than rented - your previous home, you will need to furnish mortgage company references and proof of title ownership or transfer.*

In a city such as Durham with colleges and universities, it is likely that you will have first-time renters with no rental history. By requiring a qualified co-signer for first-time renters, you can provide necessary housing while protecting your investment.

Variations of this rule have been used by many landlords to address the issue of renting to those who do not have a rental history or those who say "I last rented from my mother (or father, aunt, or uncle)." This criterion makes it harder for a dishonest applicant to avoid the consequences of past illegal behavior - while loyal relatives may *say* a relation is reliable, they might think twice about co-signing if they know that isn't true.

If requiring a co-signer seems unwieldy for your type of rentals, you may want to offer a different option: require additional pre-paid rent or security deposit from people who don't have a verifiable rental history.

Sufficient income/resources. *If the combination of your monthly personal debt, utility costs, and rent payments will exceed $X\%$ of your monthly income, before taxes, we will require a qualified co-signer on your rental agreement (or an additional deposit of $\$X$ amount). If the combination exceeds $X+Y\%$ of your monthly income, your application will be denied. We must be able to verify independently the amount and stability of your income. Sources the applicant can use to verify income are pay stubs, employer/source contact, or tax records. If self-employed, the applicant may provide business license, tax records, bank records, or a list of client references. For Section 8 applicants, the amount of assistance will be considered part of your monthly income for purposes of figuring the proportion of rent.*

You can, and should, verify self-employment. Drug dealers may describe themselves as self-employed on the assumption that you will have to take their word as verification. Some will be unprepared to supply tax returns, a copy of a business license, or other verification. *Note:* Some landlords include a condition for those applicants who do not have a regular monthly income, but do have substantial savings on which to draw. Landlords who set such guidelines often define a minimum cash net worth (described as a multiple of the monthly rent) for people in this category.

Landlords should use the same application for all applicants, including Section 8 voucher holders, to avoid the appearance of unequal treatment. During the processing of the application for a Section 8 voucher recipient, the applicant will inform the landlord that they have a voucher. The Section 8 voucher will pay the portion of the rent that the family cannot and therefore, the household income requirement is not relevant in this situation.

Two pieces of ID must be shown. *We require a photo ID (a driver's license or other government issued photo identification card) and a second piece of ID as well. Present both forms of ID with completed application.*

This is a simple and effective rule. Note that the second piece of identification does not have to be very "official" - generally, a credit card, student ID card, or many other types of cards will do. The issue is that a person who carries false identification may not have *two* pieces of false ID with the same name on it.

Section 8 information access. *Section 8 applicants must sign a consent form allowing the Durham Housing Authority (or your local Public Housing agency) to verify information from your file regarding your rental history.*

The Durham Housing Authority (DHA) is required to verify application information to determine eligibility for Section 8 assistance for each applicant, which includes social security numbers, birth certificates, citizenship status, income sources, and criminal history for drug or violent crimes. DHA,

however, *does not screen participants* for suitability to lease/rent a privately-owned rental property – applicant screening is the responsibility of the landlord.

Note: The lease agreement is a legally binding document between the landlord and resident. DHA does not have a lease with the Section 8 voucher recipient. Therefore, the Durham Housing Authority strongly encourages landlords to check credit reports on all applicants, which provide information on credit worthiness, past judgments, liens, property damage, past housing addresses, etc.

False information is grounds for denial. *As specified in the lease/rental agreement, you will be denied rental if you misrepresent any information on the application. If misrepresentations are found after a rental agreement is signed, your rental agreement will be terminated.*

If your applicants are not honest with you, you will turn them down. It's that simple. Remember, that it may be necessary to prove that false information was given to you by the applicant. Thus, be sure to keep good records.

Criminal convictions for certain types of crimes will result in denial of your application. *You will be denied rental if, in the last X years, you have had a conviction for any type of crime listed on the application (or document where this information appears).*

This criterion is more controversial than it may seem because people who have completed their prison terms need a place to live. Because of this issue, some landlords will not use this criterion and others limit their screening to convictions for felonies that are physically threatening. North Carolina does not recognize convicted criminals as a protected class, therefore there is no law preventing this type of screening. If you decide to include this criterion, specifically state the types of crime that will result in denial of the application. However, it is best to run your policy and process by an attorney specializing in Landlord/Tenant law just to be sure.

Few people who are planning to use a rental for illegal activity will have a verifiable, clean rental history, regardless of their criminal record. If you are performing the other recommended screening steps conscientiously, this criterion will often be unnecessary. *(For information on how to obtain a criminal record, see Appendix).*

Special Note on Persons in Recovery: Persons recovering from a drug addiction are considered to have a disability under Fair Housing laws, and therefore enjoy the right to request a reasonable accommodation if their application is rejected due to their drug conviction(s). Their “reasonable accommodation request” could include a request not to deny the applicant based on a past criminal drug possession conviction or bad credit caused by the drug addiction. In the event an applicant requests an accommodation to bend the rules to allow them to live there notwithstanding a prior conviction for drug possession or bad credit, the landlord should speak to an attorney, but often will simply grant the accommodation, subject to some minimal documentation requirements to establish that they are a recovering addict such as a letter from a therapist or doctor or recovery program citing the applicant’s participation. Once the applicant admits to being a former user, provides evidence of continuing treatment, assures the landlord that they are “clean” and then asks for an accommodation, Fair Housing case law mandates that the landlord reasonably accommodate the prospective resident’s disability by modifying his/her current policies. If the resident begins to use drugs, then they may be evicted like any other resident. “Reasonable Accommodation Request” form is available on HUD’s website at http://www.hudclips.org/sub_nonhud/html/pdf/forms/11601.doc.

Certain court judgments against you may result in denial of your application. *If, in the last X years, you have been through a court ordered eviction, or had any judgment against you for financial delinquency, your application will be denied. This restriction may be waived if there is no more than one instance, the circumstances can be justified, and you provide a qualified co-signer on your rental agreement.*

Although, in most cases, you may turn down applicants who have been through a recent court-ordered eviction, we recommend evaluating each case on its own merits. However, as with any criterion you use, once you establish your policy, apply it consistently with every applicant.

Poor credit record (overdue accounts) may result in denial of your application. *Occasional credit records showing payments within X to Y days past due will be acceptable, provided you can justify the circumstances. Records showing payments past Z days are not acceptable.*

If you are renting property, you are effectively making a loan of the use of your property to your resident. Banks don't loan money to people with poor credit. You don't have to loan the use of your property either.

You may also want to have exceptions for specific types of bills. For example, you might wish to allow exceptions if the only unpaid bills are for medical expenses. However, regardless of what other exceptions you define, remember that it is a very poor idea to accept residents who have a history of not paying previous landlords - if they didn't pay the last landlord, they may not pay you either.

Poor references from previous landlords may result in denial of your application. *You will be turned down if previous landlords report significant complaint levels of noncompliance activity such as: repeated disturbance of the neighbors' peace; reports of prostitution, drug dealing, or drug manufacturing; damage to the property beyond normal wear; reports of violence or threats to landlords or neighbors; allowing persons not on the lease to reside on the premises; failure to give proper notice when vacating the property. Also, you will be turned down if a previous landlord would be disinclined to rent to you again for violations of the lease by you or others allowed on the property during your tenancy.*

In your conversation with the previous landlord, make note of any conduct that would violate North Carolina Landlord/Tenant law or would violate the rental agreement. Keep in mind that a landlord's reference may be based on their motivation to keep good residents or to get rid of bad ones.

There is a \$X non-refundable application fee. *In order to properly process your application, we require a non-refundable application fee.*

Charging a reasonable, non-refundable application fee to cover application expenses is legal in North Carolina but only as long as they are reasonably related to the cost incurred by the landlord during the application process (usually not to exceed \$100.00) and they are not for the purpose of "holding" the apartment. The purpose is to assure that every applicant who does apply is committed to renting the unit. That way the landlord doesn't waste time and money screening those who are not planning to rent. Also, this requirement may discourage some people involved in illegal activity from applying. In some markets, however, charging an application fee may limit the number of applicants. **We will accept the first qualified applicant.**

In the interests of ensuring that you meet the requirements of fair housing law, this is the best policy to set. Take applications in order and note the date and time each application was submitted. Start with the first application. If that applicant meets your requirements, go no further - offer the rental home to the first applicant. This is the fairest policy you can set, and it helps make sure that you do not

introduce inappropriate reasons for discriminating when choosing between two different, qualified applicants.

We will require up to X business days to process an application.

Many landlords specify five business days or seven consecutive days. Generally, it is a good idea to allow yourself at least one week, although you may often complete the process more quickly. Remember, an applicant is not qualified until the application has been approved.

Making Available a Copy of the Rental Agreement

Some landlords post a copy of the rental agreement next to their screening requirements. Others offer a copy to all who wish to review it. The key is to make sure that each applicant is aware of the importance you place on the rental agreement. In addition, you may want to set a procedure to ensure that every applicant is aware of key elements of the agreements that limit a resident's ability to allow others to move onto the property without the landlord's permission. One approach:

If you are accepted, you will be required to sign a rental agreement in which you will agree to abide by the rules of the rental home or community. A complete copy of our rental agreement is available for anyone who would like to review it. In particular, in addition to other important requirements, please note that your rental agreement will:

Require that you prevent all household members, guests, and visitors from engaging in any lease violating behavior.

Forbid you and any member of your household, or your guests, from engaging in illegal drug use, sale, manufacture, distribution, or other criminal activity on or near the property.

Limit your ability to allow guests to stay for X days in a Y-day period without the advance permission of the landlord.

Provide that serious or repeated minor violations of the lease requirements on these items, or any other item addressed by the rental agreement, will result in termination of your right to possession of the premises.

Please read the entire rental agreement carefully, as we take each part of the agreement seriously. The agreement has been written to help us prevent illegal activity from disturbing the peace of our rental units and to help make sure that our residents are given the best housing we can provide.

Other Forms and Procedures

At this point, you may want to post information, as applicable, about waiting list policies, security deposits, prepaid rent, pet deposits, check in/check out forms, smoke detector compliance, and other issues relating to rental of the unit.

APPLICATION INFORMATION: WHAT TO INCLUDE

The best approach is to avoid reinvention of the wheel - contact a local legal publishing company, a rental housing association, or your own attorney for copies of appropriate forms. Whether you are using application forms or rental agreements, make sure you have forms that were designed specifically for the laws that govern your area and are up-to-date with any recent changes. It is important to make sure all information on your application is filled out completely. In addition, it is essential that you maintain all applicant records carefully to prevent misuse or theft.

These requirements, and others, will be on many standard forms:

Full name, including middle

Date of birth

Driver's license or other government-issued photo identification card

Social security number (*you'll need it for the credit check*)

Name, date of birth, and relation of all people who are going to occupy the premises

Name, address, and phone number of past two landlords

Income/employment history for the past year - income/salary, contact/supervisor's name, phone number, address. If self-employed, ask for copy of business license, tax returns, bank records, or client references

Additional income - it is only necessary to list income that the applicant wants included for qualification.

Credit and loan references - auto payments, department stores, credit cards, other loans

Bank references - bank name, account number, address, phone number

AS APPROPRIATE: Name and phone number of a relative to call in case of emergency; information about pets and deposit rules; other information required for application

It would be wise to include an authorization from the applicant to get income/employment history, credit and loan references, bank name and account number, etc. *Given all of the precautions we must take to prevent misuse and abuse of bank account and credit card numbers, both the applicant and the landlord should be very careful and make certain that there is approval to obtain all pertinent information.*

The following question is *not* typically on standard forms, but could be added. *If you are going to use it, make sure you include it on all application forms and not just some of them.*

"In the last X years, have you, or any other person named on this application, been arrested or convicted of any crime other than motor vehicle violations? If so, please list the date of the offense and the type of charge." (You could also ask about other types of crime that would constitute a threat to the health, safety, or welfare of other residents or neighbors - burglary, robbery, sexual assault, and child molestation are common examples.)

Of course, if they *do* have a conviction, they may lie about it. However, if you discover they have lied, you have appropriate grounds for denying the application or, with the right provision in your lease, terminating the tenancy. Also, it is one more warning to dishonest residents that you are serious in your resolve. (*For more information, see "How to Turn Down an Applicant" on page 27.*)

ABOUT APPLICATION FEES

In North Carolina, landlords may charge an application fee to defray the cost of screening. While individual policies vary, most stipulate that if the applicant is accepted, but chooses not to rent the apartment, the fee will not be refunded. There are pros and cons to charging application fees. The value of charging a fee with the application is preventive:

Fees can promote “self-screening.” People who are planning illegal activity may recognize your charging a fee as further indication of your commitment to screen carefully. Further, such a policy can discourage those who plan on filling out multiple applications, waiting to set up a drug operation with whichever landlord accepts them first. Moreover, if you make your written applicant screening criteria clear from the outset, the applicant should know from the beginning if they fall within the criteria and therefore be motivated to apply to those places where they have a likelihood of being accepted.

Fees can save time. You will spend less time screening people who then decide not to rent from you. Also, with a financial commitment involved, an applicant might take an extra few minutes to make sure every line on the application is filled in completely and accurately - making your verification process that much easier. Your best investment is to spend time thoroughly screening each applicant.

Charging an application fee is *not* for everyone. There is always a concern in charging application that you may drive away good applicants who do not want to waste money applying to many places. Furthermore, keep in mind that low income renters may be unable to afford an application fee.

In addition, because of the potential for abuse, North Carolina law allows for application fees are legal as long as they are reasonable, reasonably related to the cost incurred by the landlord during the application/screening process, and they are not for the purpose of “holding” the apartment. Typically the fee will vary by housing communities and often does not exceed \$100, although many chose not to charge an application fee. The following approach to an application fee policy should help keep your policy within the States guidelines:

Keep it reasonable. For example, charge enough to cover the direct out-of-pocket costs of screening a single applicant, but not more (e.g., the cost of a credit check or the amount you pay a screening company). Remember, the major value in charging an application fee is to make sure the applicant is committed to renting the home - the fee won't necessarily cover all costs you incur to screen applicants.

Keep it fair. You may want to consider returning fees to all applicants who were not given the opportunity to rent the unit, even if you incurred some screening costs on those applicants. If applicants are required to pay a fee even when they are not offered an apartment, the cost of just *finding* housing can become prohibitive.

For more information about fee policies - as well as guidance on appropriate forms to use - contact a local property management association or an experienced Landlord/Tenant attorney. For those who are running multi-family units, you may also wish to consult those same sources about a related issue - how to implement a fair waiting list policy for qualified applicants who are willing to wait for an available unit.

HOW TO VERIFY INFORMATION

Many landlords are *surprised* to receive calls from other landlords inquiring about the quality of a past resident. Apparently it doesn't happen often enough. As one landlord put it, "you can spend \$100 in time and money up front or be stuck with thousands later." As another put it, "99% of these problems can be avoided through effective screening. There is no better investment you can make."

Note: You can ask all applicants to sign a general release form giving their consent for you to ask questions regarding the application.

The following are recommended practices that will assist you in verifying information. Keep in mind that you must apply the practices you adopt fairly.

Compare the ID to the information given. Make sure the photo ID matches the applicant and the information matches that given on the application form. If the picture, address, and numbers don't match the application information, find out why - you may have cause to turn down the application. Unless obvious inconsistencies can be explained and verified to your satisfaction, you don't have to rent to the applicant.

Have a credit report run and analyzed. A credit report will provide independent verification of much of the application material. You can find out about past addresses, court ordered evictions, credit worthiness, past due bills, and other information. The reports are not foolproof, but they provide a good start. Here are your options:

Join a credit bureau directly. If you are managing a number of units and are likely to be screening multiple applicants every month, you may find it cost-effective to join a credit bureau directly and spend the time to learn how to interpret their reports. While this is an option, note that even some very large management companies go through associations or contract with applicant screening firms to gain the benefit of their outside expertise.

Or:

Have a third party pull the report and offer interpretation. If you are not screening a sufficient volume of applicants, or would like assistance in interpreting the reports, contact an applicant screening firm or local rental housing association for assistance. Services vary from organization to organization and you should shop for the organization that best meets your needs. At one end of the spectrum are organizations that handle the entire applicant screening process for you. At the other end of the spectrum are organizations that simply pull the reports and mail you a copy. There are many variations in between. Consult your local phone directory for Associations and Credit Reporting Agencies.

Independently identify previous landlords. The most important calls you make are to the previous landlords. The best indicator of a resident's future behavior is his or her past behavior. To begin, verify that the applicant has given you accurate information:

Verify the past address through the credit check. If the addresses on the credit report and the application don't match, find out why. If they do match, you have verification that the resident *actually lived there*. You can also check Internet sites for the applicant's past addresses, such as <http://www.zabasearch.com> which is a free service.

Verify ownership of the property through the tax rolls. A call to the Durham County Register of Deed's Office at (919) 560-0300 or a visit to the Durham County Tax Website: <http://www.ustaxdata.com/nc/durham/durhamsearch.cfm> will give you the name and address of the owner of the property that the applicant previously rented. Title companies and real estate brokers typically have ready access to this information as well. If the name matches the one provided by the applicant, you have the *actual landlord*.

If the name on the application doesn't match with tax rolls, it could still be legitimate - sometimes tax rolls are not up to date, property has changed hands, the owner is buying the property on a contract, or a management company has been hired to handle landlord responsibilities. But most of these possibilities can be verified. If nothing else, a landlord who is not listed as an owner on the tax rolls should be familiar with the name of person who *is* listed - so ask when you call.

If possible, cross check the ex-landlords' phone numbers out of the phone book. This will uncover the possibility of an applicant giving the right name, but a different phone number (e.g., of a friend who will pretend to be the ex-landlord and vouch for the applicant). If the owner's number is unlisted, you will have difficulty verifying the accuracy of the number provided on the application. The local phone company may be willing to give you the name of the person who uses the number on the application, although in most cases they won't.

Now you have verified the landlord's name, address, and perhaps even phone number. If the applicant gave you information that was intentionally false, deny the application. If the information matches, call the previous landlords.

Remember, if the applicant is currently renting somewhere else, the present landlord may have an interest in moving the resident out and may be less inclined to speak honestly. In such an instance, your best ally is the landlord before that - the one who is no longer involved with the resident. *Be sure you locate and talk to a past landlord with no current interest in the applicant.*

Have a prepared list of questions that you ask each previous landlord. Applicant verification forms - generally available through rental housing associations or through legal publishing companies - give a good indication of the basic questions to ask. You may wish to add other questions that pertain to your screening criteria. In particular, many landlords we spoke with use this question: *"If given the opportunity, would you rent to this person again?"*

Also, if you suspect the person is not the actual landlord, ask about various facts listed on the application that a landlord should know - the address or apartment number previously rented, the zip code of the property, the amount of rent paid. If the person is unsure, offer to stay on the line while the information is looked up - discourage requests to call you back.

Get co-signers if necessary. If the applicant meets one of your defined "borderline" criteria - such as having rented from a relative previously - and you have posted the appropriate rule, require that a co-signer apply with the applicant. Verify the credit and background of the co-signer just as you would a rental applicant. To ensure the legal strength of the co-signing agreement, you may wish to have your attorney draw up a document you can use for such purposes.

Verify income sources. Call employers and other contacts using phone numbers from the directory. If an applicant is self-employed, get copies of bank statements, tax returns, business licenses, or a list

of client references. *Don't cut corners here:* many drug distributors wear pagers, have cellular phones, and generally appear quite successful, but they cannot verify their income with tax returns, bank statements, or references from established clients.

Check for criminal convictions. In North Carolina, arrest and conviction records are public record and can be obtained for a small fee (\$10 at time of printing) in person or via mail from the Clerk of Courts (*see Appendix for the process for obtaining Durham County Criminal/Infraction Record through the Clerk of Courts and the applicable form*). You may also obtain conviction records through private reporting companies, often accessible through the Internet for a fee. Local police agencies in North Carolina cannot provide this information to you.

Your chances for getting verifiable information are best if you have the applicant's name, date of birth, social security number, and current address.

You will need to decide if you want to use arrest and/or conviction information when screening your applicants. You have to set your standards for how you will use arrest and/or conviction records and apply it fairly.

Finally, resist the urge to rely too heavily on this screening technique - there are many criminals who have not yet been convicted of a crime.

Verify all other information according to your screening criteria. Remember, before you call employers, banks, or other numbers listed on the application, verify the numbers through your local phone book or long distance directory assistance.

Join a Landlord's Association. Establishing a network with other landlords is strongly encouraged. Consult your local phone directory for Associations.

HOW TO TURN DOWN AN APPLICANT

In general, if you have posted fair rental criteria and you screen *all* applicants against those criteria, you may safely reject an applicant who does not meet your guidelines. Opinions vary regarding the amount of information that is required to be given to an applicant who is denied a rental unit. (*Note: if you are managing public housing or publicly subsidized units, your disclosure requirements may be greater than the ones described here.*) We recommend, at the minimum, following the guidelines defined by the federal government in the Fair Credit Reporting Act for denial of credit.

The following is intended as a general overview of how it works for two different types of applicant rejections. See the law itself for an exact description:²

If the rejection is based on information, in whole or in part, from non-paid sources (*the word of a previous landlord, for example*)

While you are not required to disclose immediately your reason for rejecting applicants in these situations, you *are* required to advise applicants of their right to submit, within 60 days, a written request for that information and their right to a response from you, within a reasonable period of time, disclosing the nature of the information upon which the adverse decision was made.

² For more information, contact the Federal Trade Commission by phone at (202)326-3128, or by mail at: 6th Street & Pennsylvania Ave., NW, Washington, DC 20580. A full copy of the text of the FCRA can be obtained over the Internet at <http://www.ftc.gov>.

Sample wording: *"Based on a check of information you provided in your application, you do not meet our posted rental criteria. If you have questions about this decision, you may submit a request in writing to (your name and address) within 60 days, and we will explain the basis for the decision within a reasonable period of time."*

Of course, if you receive such a request, then report the nature of the information upon which the adverse decision was based. Again, if your screening criteria are free of illegal discrimination and you have applied your criteria consistently, then you may safely reject applicants who do not measure up.

There is an additional requirement if the rejection is based on information from a person who is your "affiliate" (e.g. a co-worker or co-owner). The process is identical to that described above, except that the required response time is specifically stated: 30 days or less from the date the landlord receives the rejected applicant's written request.

Of course, when possible, keep it simple. For example, if you are turning down an applicant simply because you accepted an earlier applicant, just say so. Or, if one look at the application indicates that the person doesn't have nearly enough income to rent the unit, don't make the applicant wait a week to find out - again, just say so.

In the interest of proving you have met disclosure requirements, you may want to hand out information sheet with the disclosure process described and appropriate addresses provided. Contact a local property management association and/or an attorney specializing in Landlord/Tenant law to verify the legality of your process.

If the rejection is based, in whole or in part, on information from a credit report, screening company, or other organization that you pay to provide screening information

Because of the potential for abuse of, or misinformation in, credit reports, the Fair Credit Reporting Act requires that very specific information be provided to applicants who are rejected based on information obtained from a "consumer reporting agency." While the information may be provided orally, it is a good idea to give written notification just to make sure you are in full compliance with the Act. The following is only intended as a brief orientation. The screening company or other consumer reporting agency you work with should be able to answer your questions and provide you with a simple, written form to help ensure you are in full compliance with the Act.

In situations where adverse decisions are based, in whole or in part, on information from a consumer credit report, a landlord is *required* to provide the rejected applicant all of the following information:

Notice of the rejection. Sample wording: *"Based on information we have received from your credit report (or other paid source) you do not meet our written rental criteria and we have therefore chosen to deny your application for tenancy."*

The name, address and telephone number (including a toll-free number if the agency is one that keeps nationwide consumer files) of the consumer reporting agency used that furnished the information.

That the consumer reporting agency did not make the decision to reject the applicant and therefore it is likely that they will not be able to explain the reason for the adverse decision.

That the applicant has the right to contact the consumer reporting agency within 60 days to receive a free copy of their report.

That the applicant has the right to dispute the accuracy or fairness of information in a consumer report furnished by the consumer reporting agency.

Note: Under the Fair Credit Reporting Act, the credit reporting agency will give the consumer a copy of the report directly upon their request; therefore, the landlord should NOT provide a copy of the applicant's credit report to the applicant.

Again, in the interests of proving you have met disclosure requirements, you may want to hand out an information sheet with the disclosure process described and appropriate addresses provided. The most important point here is that the process you use must be uniformly applied. Contact a local property management association and/or an attorney specializing in Landlord/Tenant law to verify the legality of your process.

OTHER SCREENING TIPS AND WARNING SIGNS

The following are additional tips to help you screen applicants. You should also be familiar with the warning signs described in the chapter on *Warning Signs of Drug Activity*. Again, as with all aspects of managing rental property, be sure to apply your rules and procedures equally for all applicants.

Consider using an “application interview.” Some landlords have started conducting a brief oral interview, often at the same time they accept the written application. Landlords who use this approach find it has these advantages:

Applicants don't know which questions are coming, so it is harder to make up a story - something that shouldn't bother an honest applicant, but may uncover a dishonest one.

The landlord has the opportunity to watch responses and take mental notes of answers that seem suspicious. For example, honest applicants usually know their current phone number or middle name without having to look it up.

The interview involves, at minimum, making sure the applicant can repeat basic information requested on the application form without reading it. For example, the landlord might ask the applicant to verify his or her full name, current phone number, current address, and other pieces of information that most honest applicants will be familiar with without having to look up.

As with all policies you set, if you decide to do application interviews, take reasonable steps to accommodate persons with speech or language difficulties. In addition, maintain a strict set of standard questions for applicants, so there is no implication that you revealed an illegal bias.

If you choose not to use an interview approach, at a minimum observe the way the application is filled out. Applicants may not remember the address of the apartment they were in two years ago, but they should know where they live now, or just came from. Generally, honest applicants can remember their last address, the name of their current landlord, and other typically “top-of-mind” facts about their life.

Consider a policy requiring applications to be filled in on site. Some property managers require all application forms to be filled in on the premises - an applicant may keep a copy of their form only after it has been filled in, signed, and a copy left with the landlord or manager. Applicants who are unsure of some information should fill in what they can, and come back to fill in the rest. Such a policy should not be a barrier to honest applicants - in most cases, they would have to return to bring back the signed application anyway. However, the policy can dampen the ability of dishonest applicants to work up a story.

Assuming you have communicated your commitment to keeping illegal activity off your property, such a rule may also allow dishonest or dangerous applicants to exit with minimal confrontation - without an application in hand they are less likely to pursue making up a story and, once off the premises, they may simply choose not to return.

Again, if you use such a policy, make sure it includes making reasonable accommodation for people whose particular handicap, or other protected characteristic, would otherwise result in the policy being a barrier to application.

Watch for gross inconsistencies. When an applicant arrives in a brand new, luxury sports car and fills out an application that indicates income of \$1,000 a month, something isn't right. There are no prohibitions against asking about the inconsistency or even choosing to deny the applicant because the style of living is grossly inconsistent with the stated income. You may also deny the applicant for other reasons that common sense would dictate are clearly suspicious (credit reports can also reveal such oddities - for example if the applicant is paying out much more per month to service credit card debts than the applicant is taking in as income, something isn't right). Many don't realize it, but unless such a decision would cause a disproportionate rejection of a protected class (e.g., race, color, religion, sex, national origin, disability or familial status) the law allows room to make such judgment calls.

Be aware that people involved in illegal activity may use "fronts" to gain access to your property. You may rent to someone who has an acceptable rental history and no record of illegal activity, yet once that person moves in, boyfriends, girlfriends, or other acquaintances or family members move in and begin dealing drugs and generating other crime or nuisances. In some cases, the people you thought you rented to don't move in at all - after using their good references to rent the unit, they give the key to drug dealers, for a fee. *Across the nation, it is the permission given by residents to guests and others who have not signed the rental agreement that causes the greatest degradation in the quality of life in rental housing communities - both public and private.*

Today effective rental management means making sure you know who is living at your property. Therefore most rental agreements specify that only people named on the agreement are allowed to use the property as their residence. So make sure such a stipulation is in your rental agreement and point it out to all applicants, and emphasize that having another person move in requires submitting that person's application and allowing you to check references before permission is granted. If you make it clear you are enforcing these rules only to prevent illegal activity, you may scare away potential drug dealers, but keep good renters feeling more protected. You may further calm concerns of good renters if you assure them that you will not raise the rent because an additional person moves in. Warning applicants that they will be held

accountable for their guests, and then enforcing such a requirement with your residents, is a cornerstone of protecting your property and the surrounding neighborhood. Make sure your residents know that they must control their guests, and if they cannot, they should ask for help quickly. For more about this issue, see chapter on *Rental Agreements*.

Watch out for Friday afternoon applicants who say they must move in that very weekend.

Drug dealers know that you may not be able to check references until Monday, by which point they will already be in the rental unit. Tell the applicant to find a hotel or a friend to stay with until you can do a reference check. Could it cost you some rent in the short run? Yes. Will it save you money in the long run? *Absolutely*. Ask any landlord who has dealt with a drug problem in a rental unit. It is worth avoiding.

Observe the way applicants look at the unit. Do they check out each room? Do they ask about other costs, such as heating, garbage service, and others? Do they mentally visualize where the furniture will go, which room the children will sleep in, or how they'll make best use of the kitchen layout? Or did they barely walk in the front door before asking to rent, showing a surprising lack of interest in the details? People who are planning an honest living care about their home and often show it in the way they look at the unit. Some who rent for illegal operations forget to pretend they have the same interest.

Also, if the applicant shows little interest in any of the property *except* the electrical service, take note - both methamphetamine labs and marijuana grow operations can include rewiring efforts.

However, if your rental home or community has a waiting list, many applicants may not look closely at the rental home because they are purely interested in obtaining the first vacancy that meets their space needs (e.g., # bedrooms).

Consider alternate advertising methods for your property. Houses that are within a few miles of colleges or business parks may be desirable housing for students or professionals. Some landlords have found success in posting advertising at such locations, thus targeting people who already have a credible connection with the community.

If you are going to consider such an approach, keep in mind that fair housing guidelines apply in all aspects of managing rental housing, including advertising selection. Advertising through community colleges only may be acceptable, because such colleges typically enroll a broad cross-section of the community. But, for example, it would be inappropriate to advertise exclusively through a church newsletter or through the newsletter of a private club whose membership is not representative of the greater community. Such approaches could set up patterns of inappropriate discrimination. Either expand your media selection or change it altogether to make sure you are reaching a fair cross-section of the public. The most important point is to have an inclusive advertising campaign that avoids discrimination and attracts a diverse applicant pool.

Consider driving by the resident's current residence. Some property managers consider this step a required part of *every* application they verify. A visual inspection of applicants' current residences may tell you a lot about what kind of residents they will be. Be sure you are familiar with drug warning signs before you look at previous residences.

Announce your approach in your advertising. Some landlords have found it useful to add a line in their advertisements announcing that they do careful resident screening or that they run credit checks. The result can be fewer dishonest applicants choosing to apply in the first place. Select your wording with care - you don't want to use phrasing that in your community might be interpreted as "code" for telling a protected class that they need not apply. Again, it is important to make sure that the opportunity to apply for your units - and to rent them if qualified - is open to all people regardless of race, color, religion, sex (gender), national origin, disability (handicapping condition), and familial status, which are the categories granted civil rights law protection in Durham.

A NOTE ABOUT HIRING EMPLOYEES

Many rental property owners hire employees to assist with resident screening, routine maintenance, and other tasks. It is critical that resident managers and other "agents" of the landlord be screened even more thoroughly than applicants for tenancy. In general, when an employee breaks the law while on duty, both the employee and the employer can be held responsible by the party that is harmed by the action. When the employee violates an element of rental housing law, the liability you will hold for employee misbehavior should be reason enough for extra screening efforts.

One screening tool that you will want to consider for job applicants is a criminal conviction check, even if you don't check criminal backgrounds on prospective renters. Once property managers are hired, make certain they are trained in effective applicant screening, along with the warning signs of dishonest applicants. Also, be sure they understand, and follow, the requirements of fair housing laws.

A NOTE ABOUT IDENTITY THEFT

Identify theft is becoming an increasing problem in our country. As a landlord or property manager, it is your responsibility to protect resident and applicant confidential information.

Chapter 3: RENTAL AGREEMENTS

Get it in writing.

***WE ARE ALL RESPONSIBLE TO EACH OTHER TO RAISE THE STANDARD OF
RENTAL PROPERTIES IN DURHAM AND THE STRONGEST TOOL TO
ACOMPLISH OUR TASK IS THE RENTAL AGREEMENT.***

This manual is intended as a guide to community-oriented property management. It should not be regarded as legal advice.

If you need legal advice, contact a skilled Landlord/Tenant attorney.

Chapter 3: RENTAL AGREEMENTS

Get it in writing.

THE BASICS

Minimize misunderstandings between you and your resident by using written rental agreements, thus building a basis for fair problem resolution down the road.

USE A CURRENT *WRITTEN* RENTAL AGREEMENT

Many property managers continue to use the same rental agreements they started with years ago or will use one they found on the Internet. We cannot stress enough the importance of protecting your legal rights from the outset. Federal and state law can change yearly, and case law is in constant evolution. By using an outdated rental agreement, a landlord may be giving up important rights. If a problem resident chooses to fight in court, an outdated rental agreement could cost the landlord the case. Further, if you don't use a written rental agreement you are giving up even more rights and leaving considerable room for any oral agreements to be interpreted differently by your resident and still differently by the courts.

There are various ways to ensure that you are using an appropriate written rental agreement. One method is to purchase updated forms through a local legal publishing company. Another is to work with your attorney to develop the forms. A third approach is to network with other landlords through a property management association. You may be able to find people who will share the forms they have developed over many years of experience and legal consultation. In addition, your local landlord association may have a lease they recommend to their members.

MONTH-TO-MONTH OR LONG-TERM LEASE?

In North Carolina there are laws regulating the enforcement of lease terms that specifically state the minimum required notice a landlord must give a resident before evicting them if the lease is silent on the issue of notice (see *Appendix for "Notice to Quit in Certain Tenancies"*, NCGS 42 - 14): However, the landlord and resident can agree to longer/shorter notice terms in their lease agreement, which is why a well drafted lease agreement is essential. Here are the requirements if the lease is silent; notice must be given the required number of days prior to the end of the term in each situation which prevents termination in the middle of a term:

- ⇒ In a year-to-year lease, a landlord must give at one full calendar month notice.
- ⇒ In a month-to-month lease, a landlord must give 7 days notice.
- ⇒ In a week-to-week lease, a landlord must give 2 days notice.
- ⇒ Special rules apply for manufactured homes.
- ⇒ Consult your Landlord/Tenant attorney when dealing with lease/eviction issues.

ELEMENTS TO EMPHASIZE

It is a good practice to review your rental agreement periodically to ensure that it continues to meet your needs. The following provisions are recommended for inclusion into a basic lease. Note that this list is not comprehensive, but represents elements that are occasionally overlooked, and are particularly important for preventing and/or terminating drug-related activities. You will need to educate your resident that you take the terms of the rental agreement seriously.

1. **Assignment and Subletting is not permitted.** In North Carolina, it is legal for a resident to sublease their rental property unless such action is forbidden in the lease. This means that *unless* your rental agreement specifies otherwise, your residents have the right to assign or sublet to whomsoever they please. Make it clear that the resident cannot assign or transfer the rental agreement and may not sublet the dwelling. If you are willing to consider a sublease or an assignment of the lease, you may allow this with your written permission; new residents must be held to all screening procedures.

You must maintain control over your property - too often the people who run the drug operation are not the people who rented the unit.

2. **Only those people listed on the rental agreement are permitted to occupy the premises.** If the resident wants another adult to move in, that person *must* submit a completed application and pass the screening criteria for rental history. The method and ability to enforce this type of rule is basically limited to summary ejectment for breaking a clause in the lease (generally, a landlord will not be able to “trespass” the unwanted person or the guests of a resident).

A landlord needs to define the difference between a “guest” and a “resident.” Because residents are typically well within their rights to have guests stay with them for short periods of time, it is generally inappropriate for landlords to set rules that attempt to prevent the occasional overnight guest. However, it *is* appropriate for landlords to place limits on the ability of the resident to have other adults establish their residence at the rental without permission. Having the stipulation spelled out in the rental agreement will put you in a better legal position should that become necessary. This is an issue where legal advice would be beneficial.

3. **No drug or other criminal activity.** Make it clear that the resident must not allow the possession, distribution, sale, manufacture, or usage of controlled substances on the premises. Make it clear that the no criminal activity is allowed on the property. Your private property lease can prohibit all criminal activity, including those committed off-premises – just be sure to enforce the clause consistently and without discrimination. Drug and criminal activity are already illegal but spelling it out in the rental agreement can make it easier to proceed with eviction for the problem and can avoid some of the defenses and specific requirements set forth in North Carolina General Statutes Chapter 42 regarding Expedited Evictions of certain criminals.
4. **The residents are responsible for conduct on the property.** Residents should understand that they will be held responsible for the conduct of themselves, their children, and all others on the premises under their control, including their guests. Generally speaking, Landlord/Tenant laws are designed to allow the resident the same “my home is my castle” right to privacy as that enjoyed by any owner-occupant. However, with the right to private enjoyment of the “castle” comes the responsibility to control what goes on there.

For people who plan to “front” for illegal activity, this underscores the point that they will be given as little room as possible to protect themselves by claiming that acquaintances, and not themselves, were involved in the activity.

Wording on this provision should be done with care - landlords must remember that in some cases residents have been abused, threatened or intimidated by criminals, and are victims.

5. **The resident will not unduly disturb the neighbors.** Make it clear that the resident will be responsible for making sure that all persons on the premises conduct themselves in a manner that will not interfere with the neighbors' peace. Both the occasional loud party and the chronic nuisance behavior can severely affect a neighborhood if the behavior is left unchecked.
6. **The resident will be held financially responsible for any criminal or civil violations of the law that result in civil penalties and administrative or licensing fees caused by the resident or their guests.** The resident is responsible for avoiding minimum housing and nuisance code violations caused by the resident or their guests as well as conduct resulting in criminal charges for loud noise and nuisance parties. Examples of nuisance violations include, but are not limited to: un-mowed/un-kept lawns, trash, junk, debris, appliances, junk vehicles, and/or an abundance of anything on the property that is not properly stored. For minimum housing violations caused by the resident or their guests, landlord may instruct the resident to report the problem to them first and in a timely manner such that the problem can be repaired swiftly, thus resolving any potential citation. The lease can make the resident responsible for fixing the problem caused by the resident or their guests and reimbursing you the resulting fines or fees charged by the City. The landlord is charged and responsible for paying all fines or fees charged by the City. The City will not charge the resident with the violations.
7. **Resident will comply with State and local laws that relate to landlord and resident relationships and behavior on residential property.** This may sound both obvious and unnecessary, but it makes a difference. By using such a clause in an agreement, you will better ensure your ability to serve notices for violations of any applicable local laws and ordinances.
8. **The right to inspect the premises.** The landlord does not necessarily have the right to enter the rented premises, despite the fact that he/she may be the owner. By renting the property, the landlord is conveying to the resident the right to exclusive possession of the premises. North Carolina statutes are silent regarding any right of the landlord to inspect. For this reason, your rental agreement should have a provision allowing the landlord some right to inspect, which includes how inspection notice will be given to the resident.
9. **Alteration of the premises.** Although the resident has the exclusive right to possess the premises, he does not have the right to make any changes in the premises, without written permission of the landlord. A provision forbidding such alteration is aimed not only at protecting the property but also at common practices of drug dealers in concealing their activities. Drug dealers may fortify the property, install security devices, or black out windows for concealment purposes. If you have such a provision in your lease, you can evict the resident for a violation.
10. **Late and bad check fees.** You cannot legally charge late fees, unless you have addressed the conditions in the lease agreement. In North Carolina, there is a \$25 cap for bad-check/bounced check fees and a 5% of the total monthly rent cap for late fees – any amount

above these caps is illegal. Remember, the 5% is on the total monthly contract rental payment, not the total amount of money owed that month. For Housing Choice Voucher participants, the 5% is on the rent the tenant pays, not the total. The late fee can only be charged time for a month and cannot be calculated based on any arrearage owed for prior months. A late fee cannot be charged for maintenance costs, bad check fees, or other sums due that are not rent. You should obtain legal advice on charging late fees on partial payments.

Landlords who attend to their own obligations and require residents to meet theirs are far more effective in preventing drug and other illegal activity than those who look the other way as complaints of non-compliance roll in. It is almost *never* the case that a drug criminal's first observed, evictable offense is the dealing or manufacturing of narcotics – most likely other elements of the rental agreement have been breached by the resident.

PRE-MOVE-IN INSPECTION

Prior to signing the rental agreement, walk through the property with the resident and make a visual inspection together. Some landlords use check in/check out forms developed for the purpose, others take photographs which are then signed by both parties, and still others make a pre-move-in video tape with the resident. Regardless of the approach, agree on what repairs need to be done. Write down the agreement and have both parties sign it. Make any agreed-upon repairs and document that those have been completed as well, and have both parties sign that documentation. Give copies to your resident and keep signed and dated copies in your files. We recommend that you ask the Department of Neighborhood Improvement Services to conduct an inspection of your property when a new tenant moves in. To request an inspection, please call 919-560-1647. It's good business and good marketing to have official confirmation that a home passes inspection. The inspection shows the tenant that you take regular, thorough care of the property. The inspection report information also should help you avoid disputes about the condition of the home at the beginning of the tenancy.

Now, should your residents damage the property, you will have a way to prove the damage happened after they took possession of the rental home. (Note: This also protects *residents* - the pre-move-in inspection can prevent a bad landlord from trying to hold a resident responsible for problems that predate the tenancy.) The pre-move-in inspection can reduce the likelihood of some residents causing damage to the premises. It can also protect you against the rare case of a resident who may attempt to block a legitimate eviction attempt by damaging the premises and then claiming that the damage was preexisting.

RESIDENTS' HANDBOOK

Many managers of both single-family housing and multi-family housing provide a resident's handbook that spells out rules specific to the property being rented. Landlord/Tenant laws typically place restrictions on what types of rules can be added, but generally property managers have found success with development of guidelines that restrict excessive noise levels, define behavior for common areas of the premises, and spell out rules for use of unique facilities such as pools or common laundry areas. If the development of a handbook is not an option or is not feasible, the rules can be added to the lease, signed by both parties, and posted in the office or other common space.

In general, managers of apartments may set additional rules for those common areas that are, in effect, “occupied” by management, not residents. For example, as the “occupant” of the common areas of an apartment community, a manager may be able to ask police to remove visitors who are engaged in fights or other intimidating behavior taking place in the courtyard of the housing community. In this instance, as in others, managers may exercise more direct, immediate control over problems in the common areas of the property than they can over problems occurring on or inside a specific rental home.

KEY PICKUP

As a final prevention step, some landlords require that only a person listed on the written rental agreement may pick up the keys. This is one more step in ensuring that you are giving possession of the property to the people on the agreement and not to someone else.

DO NOT GIVE APARTMENT KEYS TO THE RESIDENT UNTIL THEY HAVE COMPLETED ALL REQUIREMENTS (e.g. made all deposits, passed resident criteria screening, etc.).

Chapter 4: ONGOING MANAGEMENT

What to do to keep the relationship working.

Unless noted, quotes are from landlords or professional property managers.

Note that some "complaints" contain inaccurate assumptions about legal rights or procedure.

COMPLAINTS WE HAVE HEARD:

"The resident moved out and someone else moved in without us knowing it. Now we have drug dealers on the property and the courts insist they are legal residents, even though they never signed a lease."

ADVICE WE WERE GIVEN:

"You need to follow one basic rule - you have to *actively* manage your property. The only landlords who go to court are the ones who don't actively manage their property."

"For most property managers the experience is one of putting out brush fires all day long. If property managers can take a more proactive approach to the process, they can build an ever improving set of renters, avoid a lot of legal hassles, and have fewer brush fires during the day."

"If your training teaches landlords nothing else, teach them that the neighbors in an area are not their enemies."

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If you need legal advice, contact a skilled Landlord/Tenant attorney

Chapter 4: ONGOING MANAGEMENT

What to do to keep the relationship working.

THE BASICS

Maintain the integrity of a good resident/landlord relationship. Strengthen communications between the landlord, residents, and neighbors. Help build a sense of community.

DON'T BEND YOUR RULES

A key to ongoing management of your property is demonstrating your commitment to your rental agreement and to Landlord/Tenant law compliance. Once you set your rules, enforce them. Make sure you meet *your* responsibilities, and make sure you hold your residents accountable for meeting theirs. By the time most drug problems are positively identified, there is a long history of evictable behavior that the landlord ignored. Go to www.ncleg.net to view the North Carolina General Statutes Chapter 42 for Landlord and Tenant laws.

- ☑ **When aware of a serious breach, take action *before* accepting the next rent payment.** If a landlord accepts rent while knowing that the resident is breaking a rule, but the landlord has not acted to correct the behavior, the landlord could lose the right to evict for the behavior. Landlord and Tenant laws generally consider acceptance of rent equal to acceptance of lease violating behaviors about which the landlord has not objected. This arises as a defense known as “waiver” – essentially that the landlord is waiving his/her objection to the lease violation by accepting rent – and although usually raised as a defense by the resident, the court may also raise this issue on its own and rule against a landlord who may have valid lease violations but waived them by accepting rent with knowledge of the violations. But note that acceptance of rent one month with knowledge does not mean that the landlord is waiving his/her right to enforce that same (still breached) provision in another month. A strong lease will provide a clause to specifically provide that waiver one month is not waiver forever and may provide other clauses protecting against this defense, especially in specific situations like suspected drug/crime violations. Further, regardless of the characteristics of your local law, it doesn't pay to teach your residents that they are allowed to break the rules. So, at minimum, as soon as you discover violations of local Landlord and Tenant laws or of your rental agreement, consult with an attorney who practices Landlord and Tenant laws for advice on the breach and acceptance of rent.
- ☑ **If someone other than the resident tries to pay the rent, get an explanation.** Also, note on the receipt that the payment is for your original residents only. Otherwise, by depositing the money, you may be accepting new residents or new rental agreement terms – remember that both written and oral agreements can establish tenancy.

- ☑ **If a person not on the lease may be living in the rental, pursue the issue immediately.** If you take no action to correct the behavior, and you accept rent knowing the resident has allowed others to move in, you may have accepted the others as residents as well. So either require the illegal subtenants to fill in a rental application and apply, or serve the appropriate notice that would require your original resident to remove the subtenants under threat of eviction if the action is not taken.
- ☑ **Fix habitability and code violations at the property quickly.** Maintaining habitable housing for residents is the most important of a landlord's responsibilities. Residents may be able to use a "retaliation" defense when a landlord attempts to evict after a resident has complained that the rental unit is substandard.
- ☑ **When a resident doesn't pay rent, address the problem.** Some landlords have let problem residents stay in a unit, not just weeks after the rent was overdue, but *months*. While flexibility is important in making any relationship work, be careful about being too flexible. There is a big difference between being willing to receive rent late during a single month and letting your renters stay endlessly without paying. Nonpayment notices is your first step. You must direct the tenant to pay or vacate. In North Carolina, the landlord must demand rent, wait ten days and then may proceed with filing a summary ejectment action in small claims court. Remember, if the resident pays, you can dismiss the case. If the resident does not, you have not lost any precious time.
- ☑ **If neighbors call to complain of problems, pursue the issue.** Few neighbors call landlords about minor problems. If you get a call from a neighbor, find out more about the problem, and take appropriate action. If there are misunderstandings, clear them up. If there are serious problems with your residents, correct them. The chapter on *Crisis Resolution* gives additional information about steps to take if a neighbor calls to complain.

Bottom line: If you respect the integrity of your own rules, the resident will too. If you let things slide, the situation can muddy fast. It may mean more work up front, but once the resident is used to your management style, you will be less likely to be caught by surprises.

KEEP A PAPER TRAIL

It is a good business practice to have a written lease agreement setting forth both parties responsibilities. It is also an excellent practice to maintain relevant information about each rental unit, including inspection reports, repairs, and landlord/resident conversations and notifications. Failure to maintain documentation places the landlord at a disadvantage when their actions are being reviewed. Likewise, residents should keep records about their contacts regarding issues with the property.

RESPONSIBILITIES DEFINED

For a legal description of the responsibilities of landlords and residents, review your local Landlord and Tenant laws, local codes, and the requirements of the Section 8 program if it applies to your units. Also - to state the obvious - if you haven't already, check your rental agreement. Rental agreements typically spell out various responsibilities of both the landlord and the resident. The following is an overview of the typical responsibilities of both parties. Go to www.ncleg.net to view the North Carolina General Statute Chapter 42 for Landlord and Tenant laws.

LANDLORD'S RESPONSIBILITIES

A landlord's responsibilities typically fall into three areas: the condition of the premises as delivered to the resident, the obligation to maintain the rental home once it is occupied, and the obligation to respect the rights of the resident. A landlord's responsibilities generally include:

- ☑ **Prior to move-in, provide the resident with a clean, sanitary, and safe rental home that meets all required City minimum housing code and nuisance code provisions.** This typically means the rental home should be cleaned, garbage and debris from previous residents removed, pest control problems addressed, the various systems (plumbing, electrical, heating) working appropriately, the rental home adequately weatherproofed, the structural integrity of the rental home maintained (e.g., no rotting steps), fire safety issues addressed (e.g., smoke detectors installed and access to secondary exits assured), working locks and windows installed, and any other potential safety hazards addressed. See the City of Durham's website for Minimum Housing Code and nuisance code provisions at http://www.durham.gov/departments/nis/pdf/min_housing_code.pdf.
- ☑ **After move-in, make sure the rental home remains "habitable."** For occupied units, landlords generally are responsible for all major repairs and are granted both the power and the responsibility to make sure that residents are doing their part to maintain the habitability of the unit. For example, while the law and the rental agreement may both require that the resident do sufficient basic housekeeping to keep the rental home free of sanitation problems, if the resident is not doing so, it is generally up to the landlord to require the resident to correct the problem - typically serving a type of notice that would require the resident to remove the garbage or vacate the premises.
- ☑ **Have procedures for promptly addressing discharges of sewage from the rental home.** The landlord and tenant may both be considered responsible for halting discharges of sewage that may arise from pipe failure or clogging of a unit's sewer service line. Responsibilities may include cleaning up any solids left on the ground and applying hydrated lime (powder form) to reduce bacteria levels on the soil. For larger spills from multifamily units, responsibility may include paying for sewage cleanup from the storm drain or a creek. Failure to respond promptly often results in much higher cost of cleanup. If tenant is responsible for causing the clog through improper disposal of rags or grease, it is up to the landlord to require the tenant to correct the problem.
- ☑ **Respect the resident's right to privacy and quiet enjoyment of the premises.** It has been a basic characteristic of landlord/resident relationships for hundreds of years that once the resident begins renting property; the resident has the right to be left alone. With some specific exceptions for such activities as serving notices, conducting maintenance inspections, doing agreed-upon repairs, or showing the rental home for sale, the landlord must respect the resident's right to private enjoyment of the rental home in much the same way that an owner-occupant's right to privacy must be respected. In those areas where a landlord does have a right to access, the landlord must generally follow a carefully spelled out notification process prior to entering the rented property.

- ☑ **Avoid retaliation against a resident.** A landlord cannot retaliate against a resident who is legitimately attempting to cause the landlord to meet his/her responsibilities. For example, a landlord may not increase rent, decrease service, attempt to evict, or take other retaliatory action in response to a resident asking a landlord to repair a worn out furnace, fix a rotting step, or take other actions that fall within the landlord's responsibility under the law.
- ☑ **Do not use self-help eviction measures.** North Carolina law mandates that, unless a resident voluntarily moves out, a landlord must use legal process – NOT self-help measures – to end the resident's occupancy. Changing the locks or disconnecting electric or water service to the rental home are ILLEGAL methods for seeking removal of the resident. Engaging in such practices exposes the landlord to legal liability to the resident for monetary damages. Instead, the owner's sole legal remedy is to file a summary ejectment action at court in order to correctly seek the removal of the resident.

Point of Emphasis: Either the resident leaves voluntarily or the landlord follows the procedures set forth in the summary ejectment statute; the landlord cannot change the locks, turn off the utilities or otherwise interfere with the tenancy without a court order.

- ☑ **Do not engage in illegal discrimination.** In North Carolina and in the City of Durham, landlords cannot discriminate on the basis of a resident's (or applicant's) **race, color, religion, sex (gender), national origin, disability (handicapping condition), or familial status (e.g., having children, being pregnant)**. Your local laws may include additional protected classes. This means that you cannot use such class distinctions to screen applicants or to treat residents differently once you enter into a rental agreement. For more information about the application of civil rights laws, see the chapter on *Applicant Screening*. If you have any questions, we strongly encourage you to contact the Human Relations staff at 919-560-4107.
- ☑ **Enforce the terms of the rental agreement and Landlord/Tenant law.** While both the rental agreement and the law will identify various required behaviors of residents, in general it is up to the landlord to make sure the resident complies. If the resident is not in compliance, the law generally gives landlords the power to serve various types of "cure" and "no-cure" notices to correct the behavior or require the resident to move out. Essentially, unless the landlord takes action to correct the problem, there are few other mechanisms to correct difficulties associated with problem residents.

If your problem residents are involved in criminal behavior for which there is enough evidence to make an arrest, the police may be able to arrest the resident and have that person serve jail time. However, while arrest may remove the resident from the property, you may still need to serve an eviction notice to regain possession of the property. (See the chapter on *The Role of the Police* for more information.)

RESIDENT'S RESPONSIBILITIES

A resident's responsibilities are generally to assure that no harm is done to the rental home and to pay the rent. For more information, go to www.ncleg.net to view the North Carolina General Statutes Chapter 42 for Landlord and Tenant laws. A resident's responsibilities generally include:

☑ **Do basic housekeeping, comply with the rental agreement, and avoid harming the unit.**

In addition to complying with rental agreement provisions, residents are typically required to use the premises in a reasonable manner, cause no damage to the rental home beyond normal wear and tear, keep the premises free of accumulations of garbage and other waste, cause no sewer blockages from improper disposal of grease and other materials, and do sufficient housekeeping to avoid safety and sanitation hazards. Also, from a civil standpoint, residents are responsible (as everyone is) for not violating the law – for example for being a nuisance or violating the city noise ordinance. Also, residents are generally considered responsible for the behavior of others they invite onto the premises. For example, residents typically cannot defend a landlord's eviction action by claiming that all alleged violations were committed by friends who visited on a regular basis.

Note: Residents should be strongly encouraged to report problems in a timely manner in writing to the landlord first so that the landlord has an opportunity to resolve the problem. You may, and should require residents to inform you in writing about all repair problems, except in emergencies. You cannot require residents to inform you before contacting any agency about problem, however; if the problem is not resolved, then you should encourage the resident to contact the City of Durham Department of Neighborhood Improvement Services Code Enforcement Division at (919) 596-1647 or the Durham Housing Authority (Section 8 Certificates and Vouchers) with their complaint.

☑ **Pay rent.** Landlords have the right to receive rent for the use of their property and residents have an obligation to pay the rent. Residents can NOT withhold rent because a landlord refuses to meet their responsibilities.

☑ **Enforce the terms of the rental agreement and Landlord/Tenant law.** Just as it is up to landlords to make sure that residents comply with the rental agreement and Landlord/Tenant law, residents have the responsibility for making sure their *landlords* comply with the lease and the law. North Carolina law allows a resident certain remedies when a landlord does not fulfill their responsibilities under Landlord/Tenant law. First, the resident has the opportunity and an obligation to notify the landlord of needs of the property or breaches. Second, the resident may solicit the assistance of regulatory agencies in remedying any problems. The resident may consult with an attorney to explore remedies through mediation or court.

For some problems, specific agencies can assist in enforcing the law - problems associated with building code violations and fair housing issues are two examples. However, the enforcing agencies often do not get involved unless they are first notified by the resident. Residents are protected from a landlord's retaliation should they attempt to assert a right defined by the law.

PROPERTY INSPECTIONS DURING THE TENANCY

A cornerstone of active management is the regular inspection. Unless you inspect, you can't be sure you are meeting your responsibility to provide safe and habitable housing. In addition, maintaining habitable property protects your rights as well. If a bad resident can also claim that you are not meeting your responsibilities, you may have difficulty succeeding with an eviction. Conversely, if it is clear you make every effort to meet your responsibilities and you document it, a resident will be less inclined to fight an honest eviction effort.

While the purpose of a maintenance inspection is to care for the rental home and ensure its habitability, regular inspections will also deter some types of illegal activity. For example, if residents know that the landlord actively manages the property, they aren't likely to start making illegal modifications to the rental home in order to set up a marijuana grow operation. Further, inspections can help catch problems associated with illegal activity before they get out of hand. For example, it is common for drug dealers to cause damage to a rental home that is beyond "normal wear and tear." - That is a problem that could be observed, documented, and addressed through the process of a regular inspection program. Though early discovery of such damage is a possibility, the more frequent impact of an inspection program on illegal activity is basic prevention. Illegal activity is less likely to happen at property where the landlord has a reputation for concerned, active management.

The key to successful property inspection is avoiding the adversarial position sometimes associated with landlord/resident situations. An inspection program done properly should be *welcomed* by your honest residents. Steps include:

- 1. Set an inspection schedule and follow it.** At minimum, every six months. It is a rare home that doesn't need at least some maintenance or repair work at least twice a year.
- 2. Use the inspection/notice procedures defined by local law.** Generally, landlords have the right to do maintenance inspections of rental property if the resident is given proper notice. North Carolina does not have a statute that covers how much notice a landlord must give a resident before inspecting a property – this may be a provision you wish to spell out in the lease. However, giving a resident 24-hours notice is generally considered to be sufficient. If the inspection is routine, keep the approach friendly. Call the resident in advance and then follow up by serving the inspection notice. To help address all maintenance needs efficiently, you should require residents to give you written notice of any concerns they have in advance of the inspection date. Again, when done appropriately, good residents should appreciate your attention and concern for maintaining the unit.
- 3. Find and address code and habitability problems.** When you inspect the property, check for maintenance problems and handle any routine maintenance, such as replacing furnace or air conditioning filters or putting fresh batteries in a smoke detector. Discuss with the residents any concerns they have. Make agreements to remedy problems. Then repair what needs to be fixed, document and sign that resolution.
- 4. NEW Law: Carbon Monoxide Detectors Required.** In addition to having working smoke detectors, North Carolina law requires that as of January 1, 2010, all rental homes must have at least one working Carbon Monoxide detector. Further, depending on the size of a dwelling, local Code or Ordinances may require additional detectors. A photocopy of the new law is attached at the end of this Manual, as an Appendix item.
- 5. NEW Law: Imminently Dangerous Conditions that require your prompt attention and repair.** As of October 1, 2009, the law establishes the conditions below as "imminently dangerous." A photocopy of the new law is attached at the end of this Manual, as an Appendix item.

Failure to take prompt action to repair any listed condition is likely to cause a lessor to be liable for abatement of the rent and other legal claims of tenants. If any listed condition is present in a rental home, you should consult your lawyer and insurer about offering the tenant a rent reduction, or funds to stay at a motel while repairs are completed, or both.

If any listed condition cannot be repaired very promptly, you should consult your lawyer and insurer about (A) withdrawing the property from the rental market, and (B) offering the tenant another rental home a lease transfer, and compensation for moving expenses, or early lease termination and compensation for moving expenses.

- a. Unsafe wiring.
- b. Unsafe flooring or steps.
- c. Unsafe ceilings or roofs.
- d. Unsafe chimneys or flues.
- e. Lack of potable water.
- f. Lack of operable locks on all doors leading to the outside.
- g. Broken windows or lack of operable locks on all windows on the ground level.
- h. Lack of operable heating facilities capable of heating living areas to 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from November 1 through March 31.
- i. Lack of an operable toilet.
- j. Lack of an operable bathtub or shower.
- k. Rat infestation as a result of defects in the structure that make the premises not impervious to rodents.
- l. Excessive standing water, sewage, or flooding problems caused by plumbing leaks or inadequate drainage that contribute to mosquito infestation or mold."

Maintaining your property through routine inspections will also help to build a positive relationship with the neighborhood; there is nothing more frustrating to a neighborhood than a landlord who does not keep up their property.

UTILITIES

There are some instances when the shutting down of utilities is a symptom of drug activity - as dealers or heavy users get more involved in their drugs, paying bills can become less important.

Remember: If your lease stipulates that the resident is responsible for utility bills, and the resident stops paying for those services, you have grounds for serving eviction notice requiring that residents get back into compliance with the lease terms or vacate the premises. In general, a well-drafted lease will provide for eviction if the resident fails to maintain basic utilities.

NEW Law: With regard to *lease executed on and after October 1, 2009*, the law now establishes **procedures for the way landlords may bill tenants for water service.** The billing must be written and comply with the statute. A photocopy of the new law is attached at the end of this Manual, as an Appendix item.

TRADE PHONE NUMBERS WITH NEIGHBORS

Landlords of single-family residential housing sometimes don't hear of dangerous or damaging activity on their property until neighbors have written to the mayor, or the police have served a search

warrant. Quite often the situation could have been prevented if the landlord and area neighbors had established a better communications link.

Find neighbors who seem responsible, concerned, and reliable. Trade phone numbers and ask them to advise you of serious concerns. You'll know you have found the right neighbors when you find people who seem relieved to meet you and happy to discover you are willing to work on problems. Conversely, if neighbors seek you out, work with them and solicit their help in the same way.

NOTE: Landlords and neighbors tend to assume their relationship will be adversarial. Disarm any such assumptions and get on with cooperating. If you both want the neighborhood to remain healthy and thriving, you *are* on the same side and have nothing to gain by fighting each other.

Chapter 5: APARTMENT WATCH/ PROMOTING COMMUNITY

How to turn an apartment complex into a community

Unless noted, quotes are from landlords or professional property managers.

Note that some "complaints" contain inaccurate assumptions about legal rights or procedure.

COMPLAINTS WE HAVE HEARD:

"We already have an 'apartment watch.' The residents get together and watch the manager to see if I screw up!"

ADVICE WE WERE GIVEN:

"Please teach landlords that their good residents can help."

This manual is intended as a guide to community-oriented property management. It should not be regarded as legal advice.

If you need legal advice, contact a skilled Landlord/Tenant attorney

Chapter 5: APARTMENT WATCH/ PROMOTING COMMUNITY

How to turn an apartment complex into a community

THE BASICS

Good landlords and good residents must learn to work together for the common goal of a safe community.

BENEFITS

In multi-family units, unless your residents report suspicious behavior, you may not find out about drug activity until the problem becomes extreme. Some people - rental property residents and homeowners alike - are frightened to report illegal activity until they discover the “strength in numbers” of joining a community watch organization. Whether you call your efforts “apartment watch,” “community pride,” or “resident retention programs,” the goal is the same: transforming an apartment complex into a community.

Organizing a community is more than just encouraging residents to act as “eyes and ears.” In the absence of a sense of community, the isolation that residents feel can lead to apathy, withdrawal, anger - even hostility - toward the community around them. Organizing efforts can lead to profound changes: as apartment residents get to know each other and the manager, a sense of community - of belonging - develops, and neighbors and residents are more willing to do what it takes to keep a neighborhood healthy.

Complexes that enjoy a sense of community often have more stable tenancies and lower crime problems than comparable complexes that are not organized. Managers who have initiated such efforts note these benefits:

- ☒ Lower turnover, leading to considerable savings.
- ☒ Less damage to property and lower repair bills.
- ☒ Reduced crime.
- ☒ A safer, more relaxed atmosphere for the residents.
- ☒ A positive reputation for the housing community, leading to higher quality applicants and, over time, increased property values.

KEY ELEMENTS

The key to effective cooperative community building is to have the property manager take the lead and make sure the efforts are ongoing. Community organizing that is run entirely by residents may have less long-term stability, simply because it is the nature of rental housing that resident turnover will occur and key organizers will move on. For this reason, having the manager keep the program going is an important part of a successful program. Further, if management waits until the residents are so fed up that they organize themselves, the relationship may be soured from the start. If management

takes a proactive role in helping residents pull together for mutual benefit, the opportunity for a positive working relationship is great. Tips include:

1. **Clean house.** If you have residents who are involved in drug activity, illegal gang activity, or other dangerous criminal behavior, resolve the issue before inviting residents to a building-wide meeting. Your good residents may be frightened to attend a meeting where they know bad residents might show up. In addition, they may question your motivation if you appear to encourage them to meet with people involved in illegal activity. So before you organize, you will need to evict problem residents and make sure that improved applicant screening procedures are in place. Until then, rely on informal communications with good residents to help identify and address concerns.
2. **Make community activities a management priority.** Budget for the expenses and consider promotion of such activity a criterion for management evaluation. It is not an afterthought. It is not something that resident managers should “get around to” if there is time. Unless managers make community organizing a priority, it will not get done.
3. **Hold meetings/events quarterly.** Don't expect major results from the first meeting, but do expect to see significant differences by the time the third or fourth is held.
4. **Meet in the common areas if possible.** While small meetings can be held in the manager's office, a vacant unit, or - should a resident volunteer - in a resident's apartment, more people will feel comfortable participating if they can meet on “neutral” territory. Also, if you can hold events in courtyards or other outdoor locations, you may have more room to structure special events for children in the same area.
5. **At each event, encourage people to meet each other.** Regardless of other specific plans for meetings, take basic steps that encourage people to meet each other. Simple steps done faithfully can make a big difference over time. At each event:
 - **Use name tags.** This simple step is important in helping to break down the walls of unfamiliarity for newcomers.
 - **Begin any formal meeting by having people introduce themselves by name.**
 - **Allow time at each event for people to socialize.** Make sure that some of this time happens after the meeting agenda is underway. Once the event is underway, participants will have the shared experience of the meeting with which to start a conversation.
 - **Offer refreshments.** Whether it is as simple as coffee and pastries or as involved as a potluck or a summer barbecue, free food can attract many to a meeting who might not otherwise have attended.
 - **Include activities for children and teenagers, as well as for adults.** Getting children involved in games and other events will provide a positive experience for the children and help encourage parents to meet each other. Also, like adults, when children and teenagers get to know their resident manager better, they are more likely to share information. This is important because teenagers, in particular, may have information about a community problem of which the adults are unaware.
6. **Hold “theme” events and special meetings as appropriate.** There is a balance between holding a purely social event and a meeting for the purpose of addressing an agenda. The balance at each meeting can vary, but it is important to provide some of both. At least one of the meetings held each year should be primarily for the purpose of celebration - a holiday party in the

winter or a “know your neighbor” barbecue in the summer. Others can offer a time for socializing and a time for covering an agenda. Meeting agendas can be as varied as the types of apartments and people who populate them. In general meetings should:

- **Respond to issues that are a direct concern to a number of residents.** If there are immediate concerns, such issues should take priority over other potential agenda items. If residents are concerned about gang violence in the neighborhood, less pressing topics may seem irrelevant.
- **Provide new information about the local community.** This could take any number of forms. You might invite merchants from the area, fire fighters, police officers, members of neighborhood associations or other community groups, social workers, employment counselors, or any number of other people who could share useful information with residents.

Also, remember the importance of keeping meeting agendas on track, interesting, and focused on tangible, measurable outcomes. If residents feel that meetings rarely address the published agenda, interest will shrink quickly.

7. **Nurture a sense of shared responsibility.** While it is important for management to continue providing support for the community-building process, it should not be a one-way street. Leadership in the housing community should be nurtured, and volunteers recruited at each meeting to assist with the next meeting, program, or event. The more residents experience the community-building process as a joint effort of management and residents, the more they will appreciate it. Promoting a sense of shared responsibility can be accomplished in many ways. Here are just a few tips:
 - **Ask for volunteers to serve on a “residents’ council.”** The council could meet informally once a month to discuss issues of concern in the housing community and to plan the upcoming community-wide events. Don’t be discouraged if only one or two people get involved initially. With success, more will join.
 - **Whenever possible, have residents set the meeting agendas.** Whether it is through a residents’ council or simply by collecting suggestions at community events, make sure residents know they play a key role in defining the direction of community-building efforts.
 - **Give residents a chance to comment on plans for the property.** Even the simplest issues can be turned into opportunities for community building. For example, if a fence is going to be built or replaced, before going ahead with the work, discuss the plans at a meeting and allow residents to air concerns or suggestions. You may hear some new ideas that can make the end result more attractive. In those situations where you cannot act on a suggestion, you have the opportunity to explain your reasons to your residents, and at least have them experience a level of participation that they did not previously have. Along similar lines, by listening to resident concerns, you may discover that a relatively simple adjustment in policy can result in a significant increase in overall resident satisfaction.
8. **Pick projects that can succeed.** Don’t promise more than you can deliver. Make sure that easily implemented changes are done promptly so that residents can see the results. While it is important to take on the larger goals as well (such as getting rid of drug activity in the rest of the neighborhood), short-term results are needed to help residents see that change is possible.
9. **Develop a communications system.** This can be as elaborate as quarterly or monthly newsletters complete with updates from management, articles from residents, advertisements

from local merchants, and referrals to local social service agencies. Or it may be as simple as use of a centrally located bulletin board where community announcements are posted. Information can also be exchanged through email as long as the information intended for all residents is available in paper form for those residents without email access. Whatever the process, the key lies in making sure that your residents are aware of the information source and that they find it useful enough to actually read it.

10. Implement basic crime prevention measures. In addition to the general community-building techniques described, various traditional crime watch techniques also can be implemented. Apartment watch training should be provided to your involved residents prior to getting underway. Contact a Durham Police Department Crime Prevention Officer (or a crime prevention officer in your area) for more details (*see chapter on "Role of Police" for DPD Crime Prevention Officers' contact information*). Crime prevention specialists can help facilitate the first apartment watch meeting, discuss the practices of local law enforcement or share tips to reduce your residents' likelihood of being a crime victim. Landlords may also want to add information referenced below to a "resource list" in a New Resident Welcome Packet.

- **Make sure residents have the manager's phone number readily accessible, and that they know to call if they suspect illegal activity.** Of course, residents should call 9-1-1 immediately if they witness a crime in progress or any life-threatening, emergency situation. They should also contact the Durham Police Department for police non-emergency services to discuss illegal activity that is not immediate in nature. Encourage residents to contact the manager *after* they have contacted 9-1-1, in the case of immediate and life-threatening situations, as well as to contact management any other time they suspect illegal activity in the housing community. The sooner your residents advise you of a problem, the more opportunity you have to solve it before the situation gets out of hand.
- **Encourage residents to develop a list of phone numbers and email addresses for each other.** By sharing phone numbers and email address (if applicable), residents will be able to contact each other with concerns, as well as organize reporting of crime problems by multiple residents. Note that sharing phone numbers and email addresses among residents should be done on a voluntary basis only - those who do not want to participate cannot be required to do so.
- **Distribute a list of local resources.** The resource list should include numbers for police, fire, and medical emergency services (9-1-1 in most areas) as well as hotlines for local crime prevention, substance abuse problems, domestic violence problems, employment assistance, and any number of other services and organizations that may be able to assist your residents.
- **Purchase a property engraver for each housing community.** Encourage residents to engrave their driver's license number or other personal identification number on items of value - video recorders, cameras, televisions, etc. Then post notices of the fact that residents in the housing community have marked their property for identification purposes. Burglars would rather steal property that can't be traced.
- **Apply "crime prevention through environmental design" changes.** If residents cannot *see* the problem, they cannot report it. The chapter on *Preparing the Property* covers environmental design approaches in detail. Essentially, it is important that lighting, landscaping, and building design combine to create an environment where drug dealers, burglars, and other criminals don't want to be. Make it difficult to break in, close off escape routes, and make sure accessible areas can be easily observed by people throughout the housing community.

- **Distribute “Twelve Ways to Improve Your Neighborhood *Right Now*” to all residents.** A list of 12 simple steps that residents can take right now to make a difference in their community can be found in the *Appendix*.
- 11. Encourage nearby neighbors and apartment communities to get involved.** Solving the whole problem may require encouraging similar steps in adjacent apartment communities or making sure neighbors in nearby single-family homes also get involved. As a starting point, invite area neighbors to at least some of the community events held at the property each year.
- 12. You are strongly urged to seek out and join the neighborhood association and/or Partners Against Crime (PAC) in which your rental property is located.** To learn about neighborhood associations and Partners Against Crime (PAC) in the area around your rental properties, contact the City of Durham Neighborhood Improvement Services Department at (919) 560-1NIS (1647) or visit their offices at 807 East Main Street, Third Floor, Suite 2300, Durham, NC 27701.

Chapter 6: WARNING SIGNS OF DRUG & GANG ACTIVITY

The sooner it is recognized, the faster it can be stopped.

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Note that some "complaints" contain inaccurate assumptions about legal rights or procedure.

COMPLAINTS WE HAVE HEARD:

"The resident moved out and someone else moved in without us knowing it. Now we have drug dealers on the property and the courts insist they are legal residents, even though they never signed a lease."

ADVICE WE WERE GIVEN:

"You've got to give up being naïve. We could stop a lot more of it if more people knew what to look for."

- Narcotics detective

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Chapter 6: WARNING SIGNS OF DRUG & GANG ACTIVITY

The sooner it is recognized, the faster it can be stopped.

THE DRUGS

While many illegal drugs are sold on the street today, the following are most common:

- 1. Powdered and Crack Cocaine.** Cocaine is an illegal stimulant. At one time cocaine was quite expensive and generally out of reach for people of low incomes. Today, the price has dropped to the point that it can be purchased by all economic levels. Cocaine in its powder form is usually taken nasally (“snorted”). Less frequently, powdered cocaine is injected.

“Crack,” a derivative of cocaine, produces a more intense but shorter high. Among other nicknames, it is also known as “rock” or “hard.” Crack is manufactured from cocaine and baking soda. The manufacturing process of changing cocaine into crack produces an ether-like odor (an odor consistent with starter fluid). The process required to make crack cocaine does not produce any of the toxic waste problems associated with methamphetamine production. Because crack delivers a “high” using less cocaine, it costs less per dose, making it particularly attractive to drug users with low incomes. Crack is typically smoked in small glass pipes or tubes. Broken car radio antennas are also commonly used to smoke crack through. A small piece of a scouring pad is often used as a makeshift filter for a crack pipe. Crack smokers use disposable lighters with the metal safety flame guard removed – *this alone is a warning sign of drug use.*

Powdered cocaine has the look and consistency of baking soda. It is often sold in small re-sealable plastic bags or in corners torn from plastic sandwich bags. Crack cocaine has the look of a small piece of old, dried soap, and one dose is typically smaller than the size of a pencil eraser. Crack is often sold in tiny re-sealable bags, little glass vials, balloons, corners of sandwich bags, or even as is - with no container at all. Both powdered cocaine and crack are “cut” or mixed with an inexpensive additive using a razor blade or similar tool.

In general, signs of cocaine usage are not necessarily apparent to observers. You may see a combination of warning signs, such as regular late-night activity (e.g., after midnight on weeknights), highly talkative behavior, paranoid behavior, constant sniffing or bloody noses (for intense users of powdered cocaine), or burn marks on teeth and/or blistered lips (for intense Crack Cocaine users). You may also see a rapidly declining financial crisis leading to unusual items being sold or pawned (tools needed for trade, appliances commonly used/needed).

Powdered cocaine usage crosses all social and economic levels. Crack usage is most often associated with lower income levels.

- 2. Methamphetamine.** Methamphetamine is an illegal stimulant. Nicknames include meth, crank, speed, crystal, STP, glass, Tina, and others. Until the price of cocaine began dropping, meth was known as “the poor man’s cocaine.” Methamphetamine (meth) is usually swallowed, snorted, or injected. A more dangerous form of methamphetamine, called “crystal meth” or “ice,” can be smoked.

“Pharmaceutical” grade meth is a dry, white crystalline powder. While some meth sold on the street is white, it may also have a yellow, red or brown appearance. Most often, meth appears to have the consistency of damp powdered sugar. The drug has a strong medicinal smell. It is often sold in tiny, re-sealable plastic bags.

Hard-core meth addicts get very little sleep and they look like it. Chronic meth users and “cooks” - those who manufacture the drug - may have open sores on their skin, bad teeth, and generally appear unclean. Paranoid behavior combined with regular late-night activity is a potential indicator of a meth user. Occasional users may not show obvious signs.

Because of the toxic waste dangers associated with methamphetamine production, we have included additional information in the next chapter, “If You Discover a Clandestine Lab.”

- 3. Heroin.** Fundamentally, heroin is a powerful pain killer - both emotionally and physically. Heroin is typically injected.

Heroin in our area is typically sold in a powder form with a white or brownish tint. It is typically sold in small amounts, packaged in small white paper envelopes usually with a “stamp,” trademark or emblem imprinted on one side of the package. Paraphernalia that might be observed include hypodermic needles with a brown liquid residue, spoons that are blackened on the bottom, and cotton balls.

When heroin addicts are on the drug, they appear disconnected and sleepy. They can fade out, or even fall asleep, while having a conversation. While heroin began as a drug of the wealthy, it has become a drug for those who have little income or are unemployed. Heroin addicts don’t care about very much but their next “fix” - and their clothes and demeanor reflect it. When they are not high, addicts can become quite aggressive. As with most needle users, you will rarely see a heroin user wearing a short-sleeved shirt.

- 4. Marijuana.** Marijuana is also known as grass, weed, reefer, joint, J, Mary Jane, cannabis, and many other names. Marijuana plants have leaves with five points and somewhat resemble poison ivy. Marijuana plants are dried before selling and resemble dried spices, sometimes with stems and seeds. Marijuana is smoked from a pipe, a water pipe (known as a “bong”), or a rolled cigarette or cigar, and typically produces a “mellow” high. However, the type and power of the high varies significantly with the strength and strain of the drug.

The marijuana grown today is far more powerful than the drug that became popular in the late ‘60s and early ‘70s. Growers have developed more sophisticated ways to control growth of the plants and cause high output of the resin that contains THC - the ingredient that gives marijuana its potency. Today’s marijuana is often grown indoors to gain greater control over the crop and to prevent detection - by competitors, animals, or law enforcement. It takes 90 to 180 days to bring the crops from seed to harvest.

Users generally appear disconnected and non-aggressive. The user's eyes may also appear bloodshot or dilated. Usage of marijuana crosses all social and economic levels.

Marijuana is generally sold in plastic bags. When smoked, the odor has been described as a "musky" cigarette, burning sage or burning hemp rope smell. The odor is difficult to mask and permeates clothing, furnishings, vehicles, or anything else in which the smoker comes in contact. Another warning sign of marijuana use is a pair of tweezers, hemostats or scissors with a burned tip.

WARNING SIGNS OF DRUGS IN RESIDENTIAL PROPERTY

The following list describes signs of drug activity that either you or neighbors may observe. As the list will show, many indicators are visible at times when the landlord is not present. This is one reason why a solid partnership with trusted neighbors is important.

Note also, while some of the indicators are reasonably conclusive in and of themselves, others should be considered significant only if multiple factors are present.

This list is primarily targeted to rental property resident activity. For information on signs of dishonest *applicants*, see the chapter on *Applicant Screening*.

DRUG DEALING

Dealers sell to the end user - so they typically sell small quantities to many purchasers. Dealing locations are like convenience stores - there is high customer traffic with each customer buying a small amount.

Neighbors may observe:

- ☑ **Heavy traffic.** Cars and pedestrians stopping at a home for only brief periods. Traffic may be cyclical, increasing on weekends or late at night, or minimal for a few weeks and then intense for a period of a few days - particularly pay days.
- ☑ **Exchanges of money.** Cash and packets traded through windows, mail slots or under doorways.
- ☑ **Lack of familiarity.** Visitors appear to be acquaintances rather than friends.
- ☑ **People bring "valuables" into the unit.** Visitors regularly bring televisions, bikes, VCRs, DVD players, stereos, cameras, lawn care equipment, or tools - and leave empty-handed.
- ☑ **Odd car behavior.** Visitors may sit in the car for a while after leaving the residence or may leave one person in the car while the other visits. Visitors may also park around a corner or a few blocks away and approach on foot.
- ☑ **"Lookouts."** Frequently "lookouts" will be younger people who tend to hang around the rental home, or on street corners near the property, during heavy traffic hours. "Lookouts" tend to be

on foot or riding a bicycle. The use of small hand-held radios by people circulating the area may be indicative of a problem. In Durham, “lookouts” commonly begin yelling when a police vehicle enters the area, such as “5-0” or “Man Down,” to alert the dealers of the police presence.

- ☑ **Regular activity at extremely late hours.** For example, frequent commotion between midnight and 4:00 AM on weeknights. Both cocaine and methamphetamine are stimulants - users tend to stay up at night. In fact, it is not uncommon for a meth user to start a large project in the middle of the night, such as taking apart or repairing a vehicle or mechanical device.
- ☑ **Various obvious signs.** This may include people exchanging small packets for cash, people using drugs while sitting in their cars, syringes left in common areas or on neighboring property, or other paraphernalia lying about. You may also observe many plastic baggies with the corners removed on the property.

Landlords may observe:

- ☑ **Failure to meet responsibilities.** Residents have failed to pay utility bills or rent, failed to maintain the property in appropriate condition, and/or caused general damage to the property. Some dealers smoke or inject much of their profits - as they get more involved in the drugs, they are more likely to ignore bills, maintenance, and housekeeping.
- ☑ **Drug paraphernalia.** Landlords may see numerous sandwich bag boxes, sandwich bags with the corners cut out, piles of tobacco (used to “blunt” marijuana and/or cocaine), numerous prescription bottles, large pharmacy-sized prescription bottles, injection bottles, hypodermic needles, handheld mirrors, single-blade razors, rolled up dollar bills, incense or an over use of air freshener, disposable lighters without metal flame safety guard, burned tips on tweezers or hemostats, and others.
- ☑ **No furniture.** Residents have not moved in any furniture or personal belongings into the property.
- ☑ **Windows obstructed.** Residents have covered the windows with black plastic or other materials that obstruct the view into or out of the property.
- ☑ **Excessive fortification.** Residents have barricaded doors and windows, nailed shut windows, added a security system, and/or added locks to inside doors or closets without permission of the landlord.

DRUG DISTRIBUTION

Distributors are those who sell larger quantities of drugs to individual dealers or other, smaller distributors. They are the “wholesale” component, while dealers are the “retail” component. If the distributors are not taking the drugs themselves, they can be difficult to identify. A *combination* of the following indicators may indicate a drug distribution operation, although there could be a legitimate or reasonable explanation for the following:

- ☑ **Expensive vehicles.** Particularly when owned by people otherwise associated with a lower standard of living. Some distributors make it a practice to spend their money on items that are easily moved - so they might drive a \$50,000 car while renting a very modest apartment or home.
- ☑ **Pagers and cellular phones.** Particularly when used by people who have no visible means of income.
- ☑ **A tendency to make frequent late-night trips.** Many people work swing shifts or have other legitimate reasons to come and go at late hours. However, if you are seeing a number of other signs along with frequent late-night trips, this could be an indicator that your resident is a drug distributor.
- ☑ **Secretive loading of vehicles.** Trucks, trailers, or cars being loaded and unloaded late at night in a hurried, clandestine manner.

Although there are plenty of legitimate reasons for the above, an active landlord or property manager will talk with the resident to learn the reasons. The landlord should contact an attorney and the local police department if you suspect drug-related activity on the rental property.

MARIJUANA GROW OPERATIONS

Grow operations are hard to identify from the street. They are more likely to be found in single-family residential units than in apartments. In addition to the general signs of excessive fortifications or overly paranoid behavior, other signs are listed below:

Neighbors may observe:

- ☑ **Electrical wiring that has been tampered with.** For example, evidence of residents tampering with wiring and hooking directly into power lines.
- ☑ **Powerful lights on all night in the attic or basement.** Growers will be using powerful lights to speed the development of the plants.

Landlords may observe:

- ☑ **A sudden jump in utility bills.** Grow operations require strong lighting.
- ☑ **A surprisingly high humidity level in the unit.** Grow operations require a lot of moisture. In addition to feeling the humidity, landlords may observe peeling paint or mildewed wallboard or carpet.
- ☑ **Rewiring efforts or bypassed circuitry.** Again, grow operations require a lot of electricity - some use 1,000-watt bulbs that require 220-volt circuits. The extra circuitry generally exceeds the power rating for the rental and can burn out the wiring - resulting in fires in some cases, or often the need to rewire before you can rent the property again.
- ☑ **Various obvious signs.** For example, basements or attics filled with plants, lights, and highly reflective material (e.g., tinfoil) to speed growing, windows covered with aluminum foil, block

lights, hydroponic or technical growing equipment, rabbit food, CO2 meters, fans, etc. Also, look for sections of a house that may be walled off to create a new “room” for growing marijuana.

METHAMPHETAMINE LABS

A methamphetamine lab (meth lab) is considered to be any location where meth has been or currently is being manufactured. Once a meth “cook” has collected the chemicals and set up the equipment, it doesn’t take long to make the drugs - as little as 1-2 hours for one batch depending on the cooking method. Small-scale meth labs are easily transported from one location to another, often in a cooler. Clandestine labs have been set up in all manner of living quarters, from hotel rooms and RVs, to single-family rentals or apartment units. Lab operators favor units that offer extra privacy. In rural settings, cooks prefer barns or houses well away from other residences. In urban settings, cooks prefer houses with plenty of trees and shrubs blocking the views, or apartment or hotel units that are well away from the easy view of management. However, while seclusion is preferred, clandestine labs have been found in virtually all types of rental units.

Neighbors may observe:

- ☑ **Strong ammonia smell.** Very similar to strong cat box odor (during the manufacturing process).
- ☑ **Other odd chemical odors.** The pungent smell of other chemicals or solvents not typically associated with residential housing.
- ☑ **Chemical containers.** Chemical drums or other chemical containers with their labels painted over or removed (*see below for a list of household chemicals and products used to manufacture meth*).
- ☑ **Outdoors smoke breaks.** *If other suspicious signs are present*, individuals leaving the premises just long enough to smoke a cigarette may also be an indicator. Because potentially explosive or highly flammable chemicals are used in meth production, “cooks” get away from the lab before lighting their cigarettes.

Landlords may observe:

- ☑ **Strong unpleasant/chemical odors.** A particularly strong cat box/ammonia smell within the rental may indicate meth production. The odor of ether, chloroform, or other solvents may also be present.
- ☑ **Unusually large quantities of household chemicals and products.** Methamphetamine is manufactured from common household chemicals and products, including flammable or caustic materials. A combination of the following, in excess of normal use level, is a warning sign: ephedrine/pseudo-ephedrine (cold medicine), red phosphorous, iodine crystals, sodium metal, anhydrous ammonia, camping fuel, acetone, lye, methanol, denatured alcohol, freon, starter fluid, ether, hydriodic acid, hydrochloric acid, muriatic acid, sulfuric acid, rock salt, coffee filters, and others. Most rental agreements forbid the storage of flammable materials in rental property, the presence of these chemicals could be a lease-violating situation. Be sure that you have a clause in your lease forbidding the storage of flammable materials on the premises.

- ☑ **Chemistry or other equipment.** The presence of flasks, beakers, condensers, funnels, hot plates, respirators, rubber gloves, rubber tubing, chemistry books, or other expensive chemistry equipment may indicate meth production. Sometimes simple cooking items are used as well, such as mason jars or baking dishes. Very few people practice chemistry as a hobby and most schools and universities have appropriate lab facilities available - if you see such articles, don't take it lightly. However, most meth labs found in North Carolina do not use chemistry equipment.
- ☑ **A maroon-colored residue on aluminum sashes or other aluminum materials in the unit.** There are several ways to manufacture methamphetamine. The ephedrine process gives off the telltale ammonia/cat box odor. However the hydriodic acid involved *does* eat metals and, in particular, leaves a maroon residue on aluminum.
- ☑ **Bottles or jugs used extensively for secondary purposes.** For example, you may see milk jugs, plastic liter soda bottles or sports-drink bottles full of mysterious liquids, sometimes multi-layered liquids. If you see a bottle with plastic tubing attached to the drinking end (usually with duct tape) or a multi-layered liquid in the freezer, notify your local law enforcement agency immediately.
- ☑ **Discarded chemistry equipment.** Garbage containing broken flasks, beakers, tubing, or other chemical paraphernalia.

Note: *If you have reason to believe there is a meth lab on your property, leave immediately, wash your face and hands, and call the narcotics division of your local law enforcement agency to report what you know. If you have reason to believe your exposure has been extensive, contact your doctor immediately - some of the chemicals involved are highly toxic. For more information about meth labs, see the next chapter, "If You Discover a Clandestine Lab."*

GENERAL

The following may apply to dealing, distribution, or manufacturing.

Neighbors may observe:

- ☑ **Expensive vehicles.** Regular visits by people in extremely expensive cars to renters who appear to be significantly impoverished.
- ☑ **A dramatic drop in activity after the police is called.** If activity stops after police have been called, but before they arrive, this may indicate usage of a scanner for monitoring police radio calls.
- ☑ **Unusually strong fortification of the unit.** Unusually strong fortification includes blacked-out windows, window bars, extra deadbolts, surprising amounts spent on alarm systems. Note that grow operators and meth "cooks," in particular, often emphasize fortifications - extra locks and thorough window coverings are typical.
- ☑ **Frequent late-night motorcycle or bicycle trips.** This would only be a significant sign if the trips are made from a location where other indicators of drug activity are also observed.
- ☑ **Firearms.** Particularly assault weapons and those that have been modified for concealment, such as sawed-off shotguns.

Landlords may observe:

- ☑ **A willingness to pay rent months in advance, particularly in cash.** If an applicant offers you six months' rent in advance, resist the urge to accept, and require the person to go through the application process. By accepting the cash without completing the application process, you might have more money in the short run, but your rental home may suffer damage, and you may also damage the livability of the neighborhood and the value of your long-term investment.
- ☑ **A tendency to pay in cash combined with a lack of visible means of support.** Some honest people simply don't like writing checks, so cash payments by themselves certainly don't indicate illegal activity. However, if other signs are also noted, and there are large amounts of cash with no apparent source of income, get suspicious.
- ☑ **Demand for secluded units.** Some law-abiding residents may just prefer the privacy, but drug dealers require privacy and may request units that are out of the way of normal traffic and out of sight to management.
- ☑ **Unusual fortification of individual rooms.** For example, deadbolts or alarms on interior doors.
- ☑ **Willingness to install expensive exterior fortifications.** If your residents offer to pay surprisingly high dollar amounts to install window bars and other exterior fortifications, they may be interested in more than prevention of the average burglary.
- ☑ **Presence of any obvious evidence.** Bags of white powder, syringes, marijuana plants, etc. are obvious evidence of drug-related activities. Also note that very small plastic bags - the type that jewelry or beads are sometimes kept in - are not generally used in quantities by most people. The presence of such bags, combined with other factors, should cause suspicion.
- ☑ **Unusually sophisticated weigh scales.** The average home might have a food scale or a letter scale - perhaps accurate to an ounce. The scales typically used by drug dealers, distributors, and manufacturers are noticeably more sophisticated - accurate to gram weights and smaller. (Of course, there are legitimate reasons to have such scales as well, so don't consider a scale by itself as an indicator.)
- ☑ **Large amounts of tinfoil, baking soda or electrical cords.** Tinfoil is used in marijuana grow operations and meth production. Baking soda is used in meth production and in the process of converting cocaine to crack. Electrical cords are used in meth labs and grow operations.

GANG ACTIVITY IN DURHAM COUNTY

Durham County is one of the fastest growing areas in the country, because it offers many of the things people look for in a great community. The county has had magnetic appeal to business and industry, research, families, entrepreneurs, and workers. Durham County enjoys a great economy and the lifestyle here makes it a great place to live, work, and do business. However, during a time of relative economic growth and prosperity in Durham County, the county is facing an escalating and dangerous threat to its economic vitality and its citizens' quality of life – youth gangs.

The formation of a community galvanized to fight gang membership and the gang activity that inevitably results, is imperative to avoid a full-blown gang problem that has undermined the quality of life in other areas.

WHAT IS A “YOUTH GANG?”

Youth gangs are considered to be gangs comprised primarily of members at or below the age of 24 years. Members typically “age out” of the gang with no further expectation of involvement, so they must continue to recruit younger members for their gangs to survive. The North Carolina Gang Investigators Association defines a youth/street gang as:

A group or association of three or more persons who may have a common identifying sign, symbol, or name, and who individually or collectively engage in, or have engaged in, criminal activity that creates an atmosphere of fear and intimidation.

WHY DO KIDS JOIN GANGS?

Kids join gangs to fill basic needs not met at home, such as respect, support, sense of family, recognition, protection, identify, belonging, money, and control. Kids also join gangs to achieve self-esteem and a feeling of self-worth. Being a gang member gives them a sense of importance and recognition. Oftentimes, youth are enticed by the money and material things flaunted by gang members. In some circumstances, kids join gangs for “protection” because they are fearful of being harmed in their neighborhood.

WARNING SIGNS OF GANG-INVOLVEMENT OR ACTIVITY

There is not one tell-tale sign to distinguish a child who is in a gang from one who is not. Many of these warning signs are typical of teenagers. However, if a child exhibits several of the following characteristics and their parent/guardian or an adult has noticed a dramatic change in their personality, they may be part of a gang.

- ☐ Sudden change in friends, clothing or behavior
- ☐ Excessively wearing of (or refusal to wear) one particular color of clothing or logo
- ☐ Tattoos and other body markings
- ☐ Drawing gang symbols and using gang handwriting (such as on notebooks, clothing, or bedroom walls)
- ☐ Photographs of a group of youths flashing hand signs and/or wearing similar clothing
- ☐ Using hand signs to communicate with friends
- ☐ Unexplained large amounts of money or borrowing money repeatedly
- ☐ Siblings or friends are in a gang

- ☐ An increase in criminal activity in the neighborhood, including loud noises, gun shots, graffiti, vandalism, home break-ins, thefts from autos, fights, robberies, stolen autos, shoplifting, and murder

WHAT YOU & YOUR RESIDENTS SHOULD KNOW ABOUT GANGS – PARENTS & PREVENTION

Prevention begins at home. Be an informed parent:

- ☒ Talk with and listen to your children.
- ☒ Place a high value on education and help your child do his or her best. Praise your children for doing well.
- ☒ Spend special time with each of your children. Plan family activities together, so each child feels involved and is interested in the activity.
- ☒ Set a positive example – be a role model. Help your children identify with positive role models.
- ☒ Know what your children are doing and with whom. Talk with other parents.
- ☒ Take time to learn the warning signs of gangs and gang activity.
- ☒ Listen to your children's music and watch their videos – talk to them about violence, gang and drug messages you observe.
- ☒ It is important to discuss gangs with your children and the problems they can create.

WHAT TO DO IF YOU SUSPECT GANG ACTIVITY

1. For all emergencies, including reporting a crime, **call 9-1-1.**
2. If you suspect gang activity or one of your residents is involved in a gang, or to request a gang awareness presentation for your housing community, call:

**Durham Police Department's Gang Unit
(919) 560-4454**

3. If you or your resident would like to remain anonymous, call **CrimeStoppers at (919) 683-1200.**
4. To report graffiti in Durham, call the **Durham One Call Center at 560-1200.**

GANG ACTIVITY & RENTAL PROPERTY

It is **not illegal** to be a gang member – only their criminal activities are illegal. However, gang activity can also disrupt the peaceful enjoyment of a resident's home and your residents' quality of life. Therefore, landlords need to ensure that their application process and rental agreement

reinforce the landlord's expectation that residents, including their children, will abide by the lease and that the landlord will take immediate action to remedy any breach. Because gang activity is a threat in Durham County, landlords are strongly encouraged to consult with an attorney who specialized in Landlord and Tenant laws. For more information, see chapters on *Applicant Screening, Rental Agreements, Crisis Resolution, and Role of the Police*.

Law enforcement alone cannot solve the problem – parents and the community, including landlords and residents, must play a key part in preventing gangs and ridding our community of them

Chapter 7: FAIR HOUSING

Building an effective partnership.

Unless noted, quotes are from landlords or professional property managers.

Note that some "complaints" contain inaccurate assumptions about legal rights or procedure.

This manual is intended as a guide to community-oriented property management.

It should not be regarded as legal advice.

If you need legal advice, contact a skilled Landlord/Tenant attorney.

Chapter 7: FAIR HOUSING

Building an effective partnership.

GUIDELINES FOR OWNERS, MANAGERS AND RENTAL AGENTS

HOW TO HANDLE ADVERTISING

The reason for advertising rental vacancies is to attract the most qualified applicant(s) for the type of unit available.

"Qualified" means person(s) who:

- ☒ meet income requirements in relation to rent,
- ☒ will pay the rent in full and on time,
- ☒ will be considerate of other renters, and
- ☒ will respect the property.

When advertising, it is recommended and legal to indicate the size and location of the unit, the monthly rental price and any features, such as utilities included, laundry room, pool or other amenities which would make the unit desirable.

It is not legal to express a preference or limitation for or against a specific class of persons enumerated by the statute. For example, it is probably illegal to advertise for "Christians only", "single adult community", "no children allowed", and we even recommend not advertising "no students accepted".

In order to provide opportunity for more balanced, integrated communities, newspaper advertising should include minority newspapers or placing listings with publications that reach diverse groups of people. We strongly recommend that you include the Fair Housing Equal Opportunity logo as words of inclusion and welcome.

HOW TO HANDLE THE APPLICATION PROCESS AND THE SELECTION OF TENANTS

The easiest way to prevent discrimination in the application and selection process is to establish written policies and procedures and apply them equally to all persons requesting information or application forms. These policies may include establishing uniform credit and reference requirements, terms and conditions regarding deposits, payment dates, maintenance, and standardized minimum income requirements. Be sure to use standardized forms. It is important to follow through with established policies and inform all applicants and renters of any changes.

DURING THE INQUIRY, APPLICATION AND SELECTION PROCESS, IT IS ILLEGAL TO:

- ☒ Inquire verbally or in writing about the applicant's class status;
- ☒ Run credit checks or verify applications on only some potential tenants and not others. For instance, single mothers or only minorities;

- ☒ have less desirable apartments to home seekers of non-favored groups in order to discourage them from desiring to rent;
- ☒ Quote a higher security deposit to a person of one group than to a person of another group;
- ☒ Apply different eligibility or income standards for different applicants based on their belonging to a certain group of persons;
- ☒ Ask if there is a man around to do yard work or make repairs. (It is permissible to indicate a preference for someone who is willing to see that yard work or repairs are made, but this cannot be used as a pretext to prevent women, the elderly or the disabled from applying.);
- ☒ Give different information regarding vacancy dates, availability, move-in costs, waiting lists or any other part of the application process based on the home seeker's class; and
- ☒ Arrange occupancy so that members of the same group are limited to the same area of the Complex. For example, having a special section for families with children is illegal.

THE MOST EFFECTIVE TOOL FOR SELECTING PROSPECTIVE TENANTS IS CAREFUL TENANT SCREENING. THE SCREENING PROCESS MAY INCLUDE ALL OF THE FOLLOWING STEPS:

- ☒ Having each adult fill out a separate application
- ☒ Contacting present and previous landlords
- ☒ Calling present employer to verify employment and salary
- ☒ Calling banks to verify accounts
- ☒ Running a credit check
- ☒ Running an eviction search
- ☒ Running a criminal history check
- ☒ Making your decision and notifying the applicant accordingly

BY UTILIZING THIS SCREENING PROCESS, YOU MAY PREVENT LOSSES FROM EVICTIONS, SKIPS, DELINQUENCIES, DAMAGES OR BAD CHECKS BY UNCOVERING APPLICANTS' PREVIOUS RENTAL THAT ARE BASED ON OBJECTIVE BUSINESS QUALIFICATIONS AND NOT ON DISCRIMINATORY REASONS. IN GENERAL, IT IS JUSTIFIED TO REFUSE TO RENT TO AN APPLICANT IF HE OR SHE:

- ☒ Will not furnish references from a previous landlord
- ☒ Has pets and your policy firmly prohibits them (with exception of assistive animals for disabled persons)
- ☒ Has a loud motorcycle/hot rod at the interview or at a past residence
- ☒ Has many unpaid bills
- ☒ Has a history of disturbing neighbors
- ☒ Does not earn enough income to meet the rent requirements
- ☒ Cannot pay security deposit in advance
- ☒ Has several large objects than cannot be stored on premises
- ☒ Is a minor with no responsible adult
- ☒ Will use a waterbed
- ☒ Cannot provide identification
- ☒ Plans to use the premises for other than living purposes
- ☒ Writes an initial check that is not honored by the bank
- ☒ Will have more than allowed number of vehicles on the premises
- ☒ Fails to complete and sign the rental application

- ☒ Fails to complete and sign the lease
- ☒ Falsifies information on either of the above forms
- ☒ Has a credit rating below your minimum standard
- ☒ Cannot obtain utility service accounts in her or his own name

It is important to remember to treat every applicant fairly and equally. Make sure your policies follow the law and are applied equally to prospects. Do not refuse a person on welfare only to accept another person who makes the same amount of money. Do not run credit checks only on those applicants you do not want.

HOW TO HANDLE EVICTION:

- ☒ Whenever race, color, religion, national origin, sex, familial status or disability is one of the factors in making a decision to evict, the owner/manager/agent is liable for illegal discrimination. This is the case even though the eviction may be justified on other grounds. An arbitrary reason should not be used to evict a person, even if it is only one of several reasons.
- ☒ When you are considering whether to file an eviction action, you should determine whether such eviction is based on a valid, non-discriminatory reason. In other words, would everyone who plays loud music and repeatedly disturbs other tenants be warned and evicted if their behavior did not change? Would everyone who failed to pay rent, damage furniture or walls, created a disturbance that involved the police or threatened other tenants be evicted?
- ☒ It is important to look at kinds of behavior that would justify eviction and set policies regarding each of these types of situations. It is more important to apply these policies consistently and even-handedly over time.
- ☒ Do not make concessions to one person when you are not prepared to make them for all.
- ☒ Evictions that are coupled with previous or simultaneous indications of prejudice or bias may be found to be discriminatory. This is particularly true if witnesses testify that an owner or manager has made racial, religious, ethnic or sexist remarks.

SOME SITUATIONS THAT HAVE PROVOKED DISCRIMINATORY EVICTIONS AND FOUND TO BE ILLEGAL INCLUDE:

- ☒ single persons who have received approval for a partner to move in and are evicted when it is found that the partner is not of the same race as the unmarried tenant;
- ☒ an unmarried couple with children who do intend to get married; and
- ☒ tenants who have invited guests of a non-favored racial or ethnic group for visits and use of complex amenities. Other examples include trying to evict a female tenant when her male partner moves; when management feels she would not be able to handle the rent alone.

Remember you can evict tenants who break the laws, who refuse to or are tardy in paying the rent, who are a clear nuisance to other tenants, or who damage the rental property. Just be sure to apply the same standard of judgment to everyone who behaves in a similar way.

HOW TO AVOID COMPLAINTS OF HARASSMENT:

- ☒ No matter what an owner/management/agent thinks of a resident, it is unprofessional and illegal to harass a person by making derogatory remarks or slurs to that resident or to others about that resident if such remarks are based on race, color, national origin, sex, familial status or disability.

☑ You may not withhold rights or privileges generally granted to everyone based on a protected class status. Such privileges might include use of the pool or other facilities, prompt repairs, parking spaces, receipts for rent paid, deposits, etc. Intimidation, threats or violence based on protected class status are also illegal.

☑ Sexual harassment is an illegal form of sex discrimination. Sexual harassment may include threats of physical or psychological harm, repeated requests for sexual favors against a person's will, assault, threats to harm children, offering privileges in exchange for sexual favors, threatening to evict a person if sexual favors are not granted.

HOW TO AVOID COMPLAINTS OF RETALIATION:

☑ Retaliation in fair housing is defined as an act of harm by the owner/manager/agent against a resident or applicant because that resident or applicant has asserted her or his fair housing rights. Remember the law protects the rights of the applicant or resident to file a discrimination case, or be a party to a complaint because of observing discriminatory practices, without fear of retaliation.

EXAMPLES OF RETALIATORY ACTS OF HARM:

☑ A manager found out that an applicant and her husband had filed a discrimination complaint based on a refusal to rent due to the husband's race, which is black. The manager then called the police and falsely accused the husband of threatening to kill her.

☑ A manager attempted to evict a white couple because they were witnesses against the owner in a discrimination investigation.

☑ A manager attempted to evict a black tenant because the tenant alleged in a complaint that the manager had been harassing him with derogatory remarks and would not make repairs which were done routinely for non-black residents.

HOW TO SERVE THE DISABLED:

☑ Due to a number of changing trends in our society, there are increasing numbers of disabled persons living independently. Such trends are significant gains in medical science, changes in treatment of the mentally ill, family support systems that are not as strong as they once were, and the desire for the disabled to live on their own and take care of themselves. Most disabled persons can be accommodated in an apartment or building fairly easily. For example, some may require only a ramp for wheelchair access, special parking for an adapted vehicle, or interior alterations such as removal of a door so a wheelchair can fit through or the addition of hand bars in the bathroom. The visually impaired may need a guide dog or signal dog and a hearing impaired person may need a light bulb signal to indicate that someone is at the door.

☑ There are some benefits to renting to the disabled. It has been shown that the disabled are more likely to be long term tenants and usually have a steady and dependable source on income and many have steady jobs.

☑ Some drawbacks to renting to the disabled that have been mentioned to us include a possibility of increased cost for making modifications, and insurance questions. Generally, the improvements made to the unit must be financed by the tenant. Many community agencies will help financially support these modifications. Unless the improvements are to fixtures, the tenant must remove them when he/she leaves. If any tenant, disabled or not, wishes to make changes or improvements to fixtures, your policy should require the tenant to obtain prior written permission from you. Your policy, lease, and permission form should clearly state tenant cannot remove those changes or improvements when she or he leaves. Those changes or improvements to fixture become your property. For example, if a tenant wishes to install grab bars or wall-mounted bookshelves, the tenant must first

obtain your written permission. Once installed in the home, the grab bars, or standards, brackets and shelves are your property. Other difficulties that arise in renting to the disabled have to do with relationships. For the most part, this concerns acceptance of the disabled by the other tenants. This is especially true if the observable behavior may be perceived as "different" or "odd". These are difficult cases that may be overcome by your willingness to learn from a new situation and lead by example.

☑ In general, the disabled persons should be considered on the same basis of others: their qualifications - their ability to pay the rent in full and on time, to respect your property, and to respect their neighbors.

HOW TO SERVE THE NON-ENGLISH SPEAKING:

☑ There has been influx of non-English speaking people from Asia, Mexico, Central America, and Africa, as well as other immigrants to our community. Many will depend upon rental housing to meet their housing needs. The language and cultural differences present special challenges to owners and managers. In addition to language and cultural differences, many are not familiar with the American urban lifestyle. Customs of dress, how people greet and interact with one another, food preparation and diet, religious observances, and intra-family relationships are all likely to be unfamiliar. Being unfamiliar with American ways, they have a tendency to rely on what they are used to doing even if it does not fit the new situation. Some assistance from you will be necessary to bridge this gap. Remember there are a number of governmental and private service agencies and churches which offer assistance in such cases.

GUIDELINES FOR RENTING TO FAMILIES WITH CHILDREN

☑ **Screening** - Use the same procedure as with any other resident:

- ability to pay rent
- job stability
- complete application form
- credit record
- occupancy policy –set a limit for the number of people, and do not base that on the ages of the occupants

☑ **Advertising**

- All signs and advertising should be reviewed to be sure that there is no limitation or exclusion of families with children.
- Telephone responses to rental inquiries must be answered as to the availability of the rental units asked for and should not include particular references to children.

☑ **Interviewing**

- Explain thoroughly the policies and regulations of the community. No one likes surprises.
- If there are hazards for small children, be careful in explaining them so that you are not seen as trying to discourage the rental.
- Treat the potential applicant just as any other applicant.

☑ **Acceptable guidelines for families with children**

- Parents are liable for all damage caused by their children, whether inside or outside the rental home.
- Small children must be supervised by a responsible person at all times.
- Small children cannot be left alone in a unit without adequate supervision.

- Areas may be designated for storage of toys or riding bicycles or tricycles.
- Impress upon the parents/guardians the responsibility of knowing where their child is at all times. Management is not a baby-sitter.

MAINTENANCE

- ☑ Walk around the property so that children and parents will observe your interest and your response.
- ☑ Learn children's names and where they live. Advise parents, preferably in writing, of any particular problem and ask for help in correcting it.
- ☑ Precautionary measures such as gates, locked doors, and removal of exterior water faucets when not in use may be needed to prevent problems.
- ☑ Look around your building and grounds with a critical eye as to what you might do to prevent possible problems.
- ☑ Instill a sense of pride in the surroundings by maintenance and management so that children will respect your efforts, as well as the parents.

SUMMARY

- ☑ Treat each applicant exactly the same.
- ☑ Offer the application form to each prospect.
- ☑ Screen each application with the same procedure.
- ☑ Be consistent with your rental techniques.
- ☑ Review your policies and be certain your management is reasonable, firm and fair.

Chapter 8: CRISIS RESOLUTION

Stop the problem before it gets worse.

Unless noted, quotes are from landlords or professional property managers.

Note that some "complaints" contain inaccurate assumptions about legal rights or procedure.

COMPLAINTS WE HAVE HEARD:

"The problem is these landlord/tenant laws don't give us any room. The tenants have all the rights and we have hardly any. Our hands are tied."

"The system works primarily for the tenant - for-cause evictions are very difficult to do. The judges bend over backward to help the tenant."

ADVICE WE WERE GIVEN:

"Serving eviction papers on drug house tenants is not the time to cut costs. Unless you already know the process, you are better off paying for a little legal advice before you serve the papers than for a lot of it afterwards."

"Tell them to read a current copy of the landlord/tenant law. Too many landlords haven't looked at it in years."

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Chapter 8: CRISIS RESOLUTION

Stop the problem before it gets worse.

DON'T WAIT - ACT IMMEDIATELY

Effective property management includes early recognition of noncompliance and immediate response. Don't wait for rumors of drug activity and don't wait for official action against you or the property (e.g., warning letters, fines, closure, or forfeiture). *Prevention* is the most effective way to deal with drug activity. Many drug operators have histories of noncompliant behavior that the landlord ignored. If you give the consistent message that you are committed to keeping the property up to code and appropriately used, dishonest tenants will learn that they can't take advantage of you or your property.

The following are three of the more common reasons why landlords put off taking action, as well as some reasons why you may want to act anyway:

- ☑ **Fear of the legal process.** Many landlords don't take swift action because they are intimidated by the legal process. However, the penalty for indecision can be high - if you do not act, and then accept rent while knowing that a tenant is in noncompliance, you may compromise your ability to take any future action about the problem. Your position is strongest if you consistently apply the law whenever tenants are not in compliance with the rental agreement or laws. Your position is weakened whenever you look the other way. You must understand your lease and local law, and act to enforce both. If you are unsure about what to do, consult your lawyer.
- ☑ **Fear of damage to the rental home.** Some landlords don't act for fear the tenant will damage the rental home. Unfortunately, such inaction generally makes the situation worse. Problem tenants may see your inaction as a sign of acceptance. You will lose what control you have over the renter's noncompliant behavior; you will lose options to evict while allowing a renter to abuse your rights; and you will likely get a damaged property anyway - if someone is the type who would damage a rental home, sooner or later that person will.
- ☑ **Misplaced belief in one's tenants.** While developing this manual, we heard this story, and similar ones, with considerable frequency: "The people *renting* the property aren't dealing the drugs. We haven't had any problems with them. The drug dealers are their friends who often stay at the property. So what do we do? The tenants aren't making trouble - it's these other people." Ask yourself: Did your "innocent" tenants contact you or the police when the drug activity first occurred? Or did they acknowledge the truth only after you received phone calls from upset neighbors or a warning from the police? (Also: Is your "innocent" tenant breaking your rental agreement by having long-term guests or subtenants, or by having guests who commit a crime on the property? Depending on your lease, there may be a lease violation that you can prove, and you may not even need to prove the tenant's actual involvement in criminal activity.)

To be sure, tenants can be victimized by friends or relations - for those tenants who seek you out and ask for assistance, help as best you can. But be careful of stories you hear from tenants who don't admit to problems until after you have received complaints from neighbors or police. The sooner tenants who "front" for others realize they will be held responsible, the sooner they may choose to stop assisting in the crime.

- ☑ **Misplaced belief that the police will take care of the problem.** Many times, tenants can be evicted for minor lease infractions before police ever become involved. There are many lease violations that you can address without filing criminal charges or asking the police to become involved. Using the civil legal process also may be less risky to you and your staff than acting as witnesses in a criminal prosecution. Landlords should see themselves, and not the police, as the first line of defense in keeping drugs and other illegal activity out of the property and should make sure the lease empowers them to take action.

IF YOU DON'T KNOW, DON'T GUESS

If you are not familiar with the process for eviction, contact a skilled landlord/tenant attorney *before* you begin. By paying for a small amount of legal advice up front, many landlords have saved themselves from having to pay for a lot of legal help further down the road. The law may look simple to apply, but as any landlord - or tenant - who has lost in eviction court can attest, it is more complicated than it seems.

IF A NEIGHBOR CALLS WITH A COMPLAINT

If a neighbor calls to report drug activity - or any other type of dangerous or illegal activity - at your rental property, take these steps:

1. **With the initial call, stay objective and ask for details.** Don't be defensive and, equally, don't jump to conclusions. Your goal is to get as much information as you can from the neighbor about what has been observed. You also want to avoid setting up an adversarial relationship - if it *is* illegal drug activity, you need to know about it.

Also, make a commitment that you will not reveal the caller's name to the tenant without permission (unless subpoenaed to do so). In the past, some landlords - perhaps believing that neighbor reports were exaggerated - have treated dangerous situations too casually and told criminals the names of neighbors who called to complain. If the neighbors *have* exaggerated, you do no harm by preserving the confidentiality of their statements. If they haven't, you could put them in real danger by revealing too much.

Ask the caller for:

- **A detailed description of what has been observed.**
- **A letter documenting what has been observed sent to you and to your local law enforcement agency's drug unit.** If you have Section 8 tenants, send copies of written letters of complaint, police reports and other documentation to the Durham Housing Authority, Attention: Director of Leased Housing, 330 East Main Street, Durham, NC 27701, or 919.638.1551.
- **Name, address, and phone number, if willing to give it.** If neighbors don't know you, they may be unwilling to give you their names on the first call. This is one reason why we recommend that you meet neighbors and trade phone numbers before a crisis occurs. Consider: If the only thing neighbors know about you is that you have rented to a drug dealer, they will have reason to be cautious when they call.
- **Names of other citizens you can call who could verify the complaint, or ask that they encourage other neighbors to contact you.** You will need more evidence than the phone call of a single neighbor to take meaningful action. Explaining this need may help encourage the neighbor to ask others to call. Also, having multiple complaints can help protect the caller by taking the focus off of a single complainant as the "cause" of the drug dealer being discovered.

A single call from one neighbor doesn't necessarily mean your tenants are doing anything illegal. However, a single call *is* justification to pursue the matter further.

2. Find out more. Go to other sources for additional information and assistance. Your goal is to collect enough information to determine the nature of any problems at the rental home, and then to take appropriate action.

- **Get in touch with other neighbors.** Even if your tenant is running a high-volume dealing operation, it is likely that some neighbors will suspect nothing - many citizens are unobservant or give their neighbors a wide benefit of the doubt. However, while some neighbors may be unaware of the scope of the problem, it is also likely that others will have a lot to tell you.
- **Contact the police.** Get in touch with a district officer for your area and contact the drug unit in your local law enforcement agency. Determine what, if anything, they have on record that can be revealed to you (City of Durham Police Department 560-4427).
- **Call a crime prevention specialist.** Many communities have police officers assigned to crime prevention work. Others hire civilians to perform the task. Start by calling the Durham Police Department (560-4427) and ask for information about neighborhood crime prevention assistance. Reports from neighbors may have been called in to your district's crime prevention staff. Crime prevention staff may also have additional information that can help you address the situation effectively. If applicable, work with the courtesy officer or your private security as part of the crime prevention team.
- **Conduct a property maintenance inspection, if you feel comfortable doing so.** Again, few tenants involved in serious illegal activity are model renters. Discovery of maintenance violations or other violations during a maintenance inspection may provide basis for serving

eviction notices. That is less difficult than developing the legal proof that criminal behavior has occurred.

3. **Once you've identified the problem, address it.** If you discover no drug activity but you discover examples of disturbing the neighbors' peace or other violations, don't let the problem continue - serve the appropriate notices. Likewise, if you become confident your property is being used for drug activity or other dangerous or illegal behavior, take action. Advise the police of your findings and your plan. The following are examples of options you might pursue:

- **If the evidence supports it, serve an eviction notice for alleged drug activity.** North Carolina law provides for an expedited eviction of tenants involved in drug activity. If you feel you have enough evidence to get such an eviction, proceed by consulting an attorney specializing in landlord and tenant law. The lease can provide more stringent rules regarding suspected criminal behavior than the North Carolina law does, and can prevent some defenses provided in the expedited eviction law.

Keep in mind that if your tenant wishes to fight in court, you will need to establish a civil - not criminal - level of proof that drug activity has occurred. This is a lower level of proof than local law enforcement would need to get a conviction. Nevertheless, allegations of drug activity or other dangerous activity should be made with care. Given the seriousness of the allegation, always contact an attorney before proceeding with this option.

Note that frequently, if the tenants are involved in illegal activity, they move out quickly rather than fighting the eviction - it won't help their drug operation to appear in court. One exception is Section 8 tenants who, for reasons unrelated to the drug activity, may be more inclined to resist eviction (as described in the chapter on *The Section 8 Program*).

Note also that your failure to act if you have grounds for serving such a notice may also put you at risk. If your tenants continue to carry out extreme behaviors that endanger the community, you could face legal action by harmed neighbors or by your local government for not taking action once you had knowledge of the problem.

- **If you have the option, consider a "nonrenewal" notice.** In most rental situations, such as month-to-month rentals or at the expiration of a lease term, North Carolina law allows you to not renew the lease without giving a cause. When available, this option can be a less adversarial way to solve the problem. Note, however, that this does not apply to most Section 8 subsidized leases.
- **Consider serving notice for other apparent causes.** "Cause" in this case could be disturbance of the neighbors' peace, nonpayment of rent, or any other significant issue of noncompliance with the rental agreement or your law that you have discovered since cashing the last rent check. Again, if you have drug activity, an inspection will likely reveal a failure to maintain the property as provided in the rental agreement, additional people living in the unit, and/or other noncompliant behavior. Note that notices served for many types of noncompliant behavior are "curable" - that is, if the tenant can fix the problem in a legally defined period of time, the tenant will be allowed to stay in the unit. *Note: Your lease does not have to provide the tenant with an opportunity to cure.*
- **Consider settling the dispute by entering into a written agreement for the tenant to move out.** Mutual written agreement to resolve the dispute by having the tenant return possession of the property is a frequently overlooked method. Essentially, if both you and

your tenant can agree that the tenant will move by a specific date, you may not need to pursue the court-ordered eviction process at all. In some instances this can be beneficial to both parties. However, a landlord/tenant attorney should be used to draft the agreement.

Done properly, this can be a useful way to resolve a problem to both your tenant's and your own satisfaction without dealing with the court process. Done improperly this will cause more problems than it will solve. Don't try this option without consulting a landlord/tenant attorney.

Again, if illegal activity *is* occurring, most tenants will take the warning and to move on.

Finally, if you evict someone for drug activity, *share the information*. Landlords who are screening tenants down the road may not find out about it unless the information is shared. Consult your lawyer about what information the law allows you to share with others. In North Carolina, landlords have a qualified privilege and lawfully can disclose some information to others.

If the resident is a Section 8 [voucher holder](#), make sure the Housing Authority of the City of Durham (DHA) receives a letter from you, your neighbors ([can be anonymous](#)) and copies of any police reports on file. DHA can terminate assistance for families that are a disruption in a neighborhood, but there must be evidence of a pattern of problems. Unfortunately, it is *not* unusual for a disgruntled boyfriend, girlfriend, other friend, or family member to attempt to cause a family to lose Section 8 assistance in retaliation for some disagreement. For this reason, DHA generally requires a police report, several letters from neighbors, landlord complaints and problems on more than one occasion. Section 8 assistance can be terminated based on an arrest – conviction is not required.

Also, contact the screening company or credit reporting service you use and advise them of the circumstances - they may also be able to keep track of the information. *Note of caution: Only report evictions to the credit reporting agencies AFTER a judgment has been won – reporting should be done carefully and deliberately because such a report must be accurate and can cause liability if you do it improperly. Once a final judgment has been entered, the judgment typically is automatically picked up by the credit reporting agencies.*

Remember: Whether or not the complaint is founded, your response to the complainant is critical to maintaining this long-term relationship.

THE EVICTION PROCESS

If the reason you are seeking to evict the resident is non-payment of rent, then before beginning the eviction process, you must make a demand on the tenant. Your lease may be written to exempt you from this requirement, but if it does not then North Carolina law requires that you demand payment and wait ten days before filing a complaint for summary ejectment. If you are proceeding under North Carolina law rather than under your lease, you can be required to accept payment if the tenant pays rent and court cost before final judgment is entered. Your lease agreement may eliminate the need for a demand and may also allow you to evict the tenant, even if they come up with the payment late.

If the reason you are seeking to evict the resident is something other than non-payment, then you should carefully read your lease to see if it requires that you make a demand or give the tenant time to fix the problem. If the lease does not provide the tenant with a right to fix the problem, or “cure,” you may proceed to file the eviction action.

If the reason you are seeking to evict the resident is due to drug or criminal activity, then you can file for eviction immediately. Read your lease and the North Carolina law on this issue and then consult an attorney for assistance.

When a complaint for summary ejectment is served, sometimes the tenant moves out, removes their property and returns the keys to you (although this does not happen very often). In such cases, you may obtain a judgment for possession of the premises. However, in those cases where the tenant does not leave amicably before the hearing, the details of the eviction process and the substantive issues of the case are analyzed here. As one landlord puts it: “90% of the cases lost are not lost on the bottom-line issues, but on technicalities.” Another landlord points out: “Even if you have police testimony that the tenants are dealing drugs, you *still* have to serve the notice correctly.”

Eviction is a legal process that you must follow. The process may be affected by the provisions of your rental agreement or Section 8 contract. Begin by reading your rental contracts and landlord/tenant law - one of the best tools you can develop is a comfortable, working knowledge of the law. In any eviction, take the following steps:

- 1. Start with the right form.** In order to begin an eviction action, you must file a Complaint at the Office of the Clerk of Superior Court. You may file the action on your own, or retain a lawyer to do so for you. Telephone the Clerk for instructions if you wish to file the action by mail.

Standard forms are available at no cost from the Office of the Clerk of Superior Court in each county, or online at www.nccourts.org. Sample forms are at the end of this manual. We strongly recommend that you use the standard forms. Use of the standard forms will speed the processing of your court case.

You may file the action in small claims court or district court. It is less expensive to file the action in small claims court. If you seek rent or other compensation in an amount that is \$5,000.00 or more, you must file the action in district court and you cannot use the standard forms discussed here.

- 2. Complete the form correctly.** You must make sure that you are suing under the proper name that of the landlord as listed on the lease. You must check the appropriate box or boxes in

section 3 to state the basis or bases for the eviction. For example, if the tenant has violated a provision of the lease, then you should check the third box that indicates breach of a condition of the lease. The violation of the lease might be failure to pay rent, criminal activity, unauthorized residents, or something else. The box below section 3 provides a space to briefly describe the tenant's noncompliant behavior. There may be other statements to include. For example, if the action involves a Section 8 tenancy, you should note that a copy of the complaint was given to the Durham Housing Authority. An attorney can help you if you have questions. The staff at the Clerk's office cannot advise you about how to complete the forms.

3. **Timing of notice must be proper.** Note that an eviction action can be lost because a landlord did not comply with the law regarding *when* notice must be given in an eviction action. Examples of frequently-made mistakes are that a landlord failed to make a demand or did not allow sufficient time for a tenant to remedy a problem (when required). If you have set a deadline by which the tenant must do a thing (example: pay the rent, remove a disabled vehicle, pay for a repair), do not file the eviction action until after that deadline has passed.
4. **Serve it properly.** Service is made by the Sheriff. Before going to court, call to make certain that service was made (*see section below on Durham County Eviction Process*).
5. **NEW Law: Authorized fees.** In regard to *leases executed on and after October 1, 2009*, the law now provides **formulas and limits for fee that landlords may charge to tenants:**

late fees, complaint filing fees, court appearance fees, and second trial fees.

Fees charged in excess of the statute are unlawful. If you have not already done so, you should consult your attorney about this new law and revising your lease contracts.

6. **Don't guess - get help.** Unless you are experienced with the legal process, you should consult with an attorney *who is experienced in eviction law* before you begin an eviction action. If you have drug activity on your property, you already have a major problem. Now is not the time to cut corners in order to save money. Using the correct legal process could save you thousands in damages, penalties, and legal fees down the road.

LEVELS OF EVIDENCE

An eviction trial is a civil proceeding. This means that civil level of proof is all that is required to succeed. This is easiest to understand in comparison with a criminal standard. For an eviction, you must show *by a preponderance of the evidence* (or 51%) that the tenant did X and it is evictable; for a criminal conviction, the State must show *beyond a reasonable doubt* that the defendant did X and X is a crime. In eviction hearing, landlords have established strong proof of drug activity by providing the following:

- ☒ Credible testimony of neighbors who have observed related behavior (such as that described in the chapter on *Warning Signs of Drug Activity*).
- ☒ Their own testimony about activity or items they observed during inspection of a rental home.

- ☑ The subpoenaed testimony of a police officer who has made an undercover buy from a tenant or arrested a tenant for possession of drugs.

In a criminal proceeding, this level of proof would generally not be enough for the police to get a search warrant. In civil court, however, strong circumstantial evidence of drug activity may suffice. Of course, the actual proof required in your jurisdiction will be determined by a combination of local law, court precedents, the presiding judge, and the “trier of fact” - either a judge or jury - who hears the case. (For more on the issues of criminal versus civil law, see the following chapter on *The Role of the Police*.)

THE COURT PROCESS

The popular belief is that a “termination” notice is sufficient to force a tenant to move out by the date specified on the notice. In fact, the notice is just the first step. Technically, the landlord’s first notice to vacate means that, should the tenant not move out by the date specified, then the landlord may file suit to regain possession of the property. While many tenants will move out before the initial notice expires, if the tenants do not, the landlord must file a civil action to regain possession of the property.

In cases where a tenant will not vacate the home, the tenant will be allowed to remain on the premises, until a landlord has received a court judgment against the tenant. Then, if forced physical removal of the tenant is required, that can only be done by the Durham County Sheriff.

Perhaps the most compelling point we can make about the entire eviction process - from service of notice to arguing in court - is this: *Eviction is an expensive, time-consuming way to “screen” tenants.* You will save much heartache and considerable expense if you screen your tenants carefully *before* you rent to them, instead of discovering their drawbacks after you are already in a contract with them.

DURHAM COUNTY EVICTION PROCESS

Once a landlord has filed a summary ejectment lawsuit, usually in small claims court, the Durham County Sheriff will serve the process following the rules established in NCGS 42-49. A four step process is followed to serve the magistrate summons with a complaint in summary ejectment. These four steps must be followed exactly or service is not complete.

Step 1: The sheriff must mail a copy of the complaint and summons to the defendant (the tenant) not later than the end of the next business day or as soon as possible, at the defendant’s last known address in a stamped addressed envelope provided by the plaintiff (the landlord).

Step 2: The deputy must, within five days of the issuance of the summons, attempt to telephone the defendant and ask that the defendant come to the office to be served or set an appointment when the deputy may serve the defendant.

Step 3: Whether or not the defendant was contacted by telephone, the deputy must make at least one visit to the place of abode of the defendant within five days of issuance of the summons to attempt personal delivery of the summons and complaint. The visit must be made at a time reasonably

calculated to find the defendant at home. At that visit, the deputy shall deliver the papers personally to the defendant or leave copies at the defendants' dwelling with a person of suitable age and discretion who also resides there.

Step 4: If service cannot be made in one of those two ways, the deputy shall go to the home and affix (post) Summons and Complaint to some conspicuous part of the premises claimed.

- (a) This kind of service is called "service by posting." Note that the deputy cannot post the summons and complaint unless a copy of each was also mailed to the defendant by first-class mail soon after the sheriff's officer received the process.
- (b) "A time reasonably calculated to find the defendant at home" would be at the officer's discretion to determine, although no court case has yet interpreted those words.

After serving the summons and complaint the deputy is required to make a proper return of service to the Clerk of Court.

The landlord must go to court and present the case. Consult a lawyer to learn who can appear at court to represent the landlord, particularly if the landlord is a corporation, general partnership, or if you work for a rental management agency, or if you did not sign the lease. If the court enters a judgment for the landlord, then the landlord must wait for ten (10) days to pass before the appeal period lapses and the judgment becomes final. On the eleventh (11th) day, if the tenant has not appealed, then the landlord must return to the court to pay for and obtain a Writ, or may call the Clerk for instructions about how to do so by mail.

Step 1: Within seven days of receipt of the Writ of Possession for Real Property, the Sheriff must carry out the writ. The writ itself is valid for 90 days.

Step 2: The Sheriff must give the tenant notice of the eviction. This notice states the approximate date and time the Sheriff will arrive at the rental home with the landlord to remove the tenant and deliver legal possession of the home to the landlord. Notice is sent by the Sheriff by first class mail at least five days in advance of the date.

On the appointed day the Sheriff will meet the landlord at the location. The landlord has three options.

1. The sheriff will ask the landlord "Do you want to evict?" If the landlord says yes, then the deputy will place the landlord in possession of the premises and the landlord is permitted to change the locks. The landlord will often allow the tenant's property to remain for an additional ten (10) days. In this case, the deputy will padlock the property. The landlord will have to give the tenant a reasonable opportunity to retrieve their personal property (during normal business hours or at another time agreed upon). Once the landlord has possession, the tenant cannot enter the property without the landlord's permission. The sheriff is finished with the process at this point. At the end of the ten (10) days, the landlord may throw away

the tenant's belongings. Other options for storing or donating the property are listed in the North Carolina Statute on this issue, N.C.G.S. § 42-25.9.

Or

2. The landlord can tell the deputy that they do not want an eviction (this is typically because the tenant has paid all of their debts).

Note about “Self-Help” Evictions – Is Illegal

North Carolina law mandates that, unless a tenant voluntarily moves out, a landlord must use legal process – NOT self-help measures – to end the tenant's occupancy. Changing the locks or disconnecting electric or water service to the unit are ILLEGAL methods for seeking removal of the tenant. Engaging in such practices exposes the landlord to legal liability to the tenant for monetary damages. Instead, the landlord *must* file a summary ejectment action at court in order to correctly seek the removal of the tenant. *Point of Emphasis:* Either the tenant leaves voluntarily or the landlord follows the procedures set forth in the summary ejectment law; the landlord cannot change the locks, turn off the utilities or otherwise interfere with the tenancy without a court order.

IF YOU HAVE A PROBLEM WITH NEIGHBORING PROPERTY

When chronic problem activity is present in a neighborhood, every affected citizen makes a conscious or unconscious choice about what kind of action to take. The choices are to move away, to do nothing and hope the problem will go away, or to take action to stop the problem. Doing nothing or moving away usually means the problem will remain and grow larger - somebody someday will have to cope with it. Taking action, especially when it involves many neighbors working together can both solve the problem and create a needed sense of community.

Many neighbors are under the impression that solutions to crime are the exclusive responsibility of the police and the justice system - that there isn't much an individual citizen can do. Actually, there is a lot that citizens can do, even must do, in order to ensure they live in a safe and healthy neighborhood. Getting more involved in your neighborhood isn't just a good idea - it is how our system of law and civic life was designed, and the only way it can really work. With that in mind, the following is a list of proven community organizing techniques to help you begin:

- 1. Find others concerned about the problem and enlist their help.** As you consider the steps described below, keep in mind that multiple neighbors following the same course of action will magnify the worth and effectiveness of each step. In particular, several neighbors calling a government agency separately about the same problem will usually raise the seriousness of the problem in the eyes of the agency. Involvement of multiple neighbors also increases safety for everyone. People involved in illegal activity might target for revenge one neighbor they perceive as causing them problems, but are less likely to try to identify and harass multiple people.
- 2. Make sure that law enforcement is informed in detail.** It doesn't matter how many police we have if people don't call and tell them where the crime is. Even if you have had the experience of calling without getting the results you expect, keep calling. As you also follow other recommendations of this section, keep working with police throughout the process.

Of course, establishing a connection with a particular officer who works in the area regularly is often a key to success. Other strategies include:

- **Report incidents when they occur.** Call 9-1-1 if it is an emergency or call police narcotics detectives, gang units, and other special enforcement units as appropriate. You may need to do some research to find out which part of what agency deals with a particular type of problem.
 - **Keep activity logs or diaries** about the address when disturbances are frequent, and encourage neighbors to do the same. Share copies of these logs with an officer, in person if possible.
 - **Encourage civil abatement action.** When speaking with enforcement officials, be aware that, in addition to criminal investigation, police often have the option of using civil law to help solve a problem - such as fining the owner or closing property that is associated with illegal drug activity.
- 3. Consider making direct contact with the property owner.** Many activists contact the owner directly and ask for help in solving the problem. While police officers may do this for you, it is also an option available to any citizen directly. Understand that there may be a risk to your personal safety in contacting some irresponsible owners, so be sure to plan your approach carefully. In general, try a friendly, cooperative approach first - it usually works. If it doesn't, then move on to other tactics. Here are some tips for the friendly approach:
- **Use tax records to find the owner.** Local property tax assessment records generally will identify who owns the property. In Durham County, property tax records can be accessed through the County's website at <http://www.co.durham.nc.us/departments/txad/taxdb/select.cfm?>
 - **Contact the owner.** It is amazing how often this simple step is never taken. Discuss the problem and ask for assistance with solving it.
 - **Suggest this training.** If the property is a rental, consider delivering a copy of this manual and encourage the owner to attend a Landlord Training Program in your area.
 - **Describe events.** Provide the owner with specific descriptions of events: Answer the questions who, what, where, when and how about each event.
 - **Give police references.** Give the property owner the names of officers who have been called to the address. (Names of specific officers are far more useful than general statements like "The police have been out frequently.")
 - **Share activity logs.** Give copies of your activity logs to the owner, if it appears the owner will use them to support lease enforcement actions.
- 4. Enlist the help of others.** If it becomes apparent that the problem will not get resolved without more effort, it may be time for more aggressive action. This may take a higher level of organization and structure for the neighborhood. Here are some approaches to apply more pressure:
- **Remind others to call.** After any action you take, call several other neighbors and ask them to consider doing the same thing, whether it is reporting an incident to police, calling the landlord, or speaking to a local official. Do *not* ask neighbors to call and repeat your report. Do ask neighbors to make an independent assessment of the problem you have observed and, if they also consider it a problem, to report it as well.
 - **Call the Durham Housing Authority.** If the residents are receiving public housing assistance, contact the Durham Housing Authority and report the problems observed.

- **Call City Inspections.** Call City Inspections to report maintenance code violations. Maintenance codes address exterior building structure and appearance, interior structure and appearance, as well as nuisances in yards such as animals, abandoned cars, trash, and neglect. Most properties with problem residents will have many violations of maintenance codes as well.
 - **Contact the office of the City of Durham Attorney, Durham County Attorney or Durham County District Attorney concerning their taking legal action against the property owner.** North Carolina law allows these organizations to take legal action against a property owner who is maintaining a nuisance, including a site where illegal drugs are being used or sold. If the case is won, the court can impose stringent penalties upon the property owner, including payment of monetary damages and even loss of legal title to the property where the nuisance has taken place. If a tenant on the property has created the nuisance, he/she may be lawfully removed from the property by court order once a full hearing has been held before a judge, if the judge so orders.
 - **Consider calling the mortgage holder.** Sometimes the holder of the mortgage on a property can take action if the property is not in compliance with local law. Generally, if a financial institution holds a mortgage on real property (land), the name of the institution will be listed on the title records, kept by the county.
 - **Write letters.** Citizens have the power to write letters to anyone - mayors, council members, chiefs of police, building inspectors, and many others. Your written documentation can add credibility and legitimacy to a problem that may not have received as much attention as it required. The first letters should be to those in a position to take direct action - a police officer, code inspector or other person authorized to address problems like the one you are working on. Don't write letters to managerial or political authorities until you have given the "chain of command" a chance to work. Do write letters to such authorities if it becomes apparent that the help your neighborhood needs is not forthcoming. When necessary, follow up calls or letters with personal appointments.
5. **Two strategies of last resort.** Generally, these activities should be undertaken only by a well-organized group, and only when consistent, diligent work with police, neighbors, and city officials has made little or no progress.
- **Consider getting the media involved.** After making a concerted effort to get results through other means, including working with the landlord, discussing the problem with the media can be a way to focus more attention - and sometimes resources - on a problem. However, going to the media with your complaint before communicating clearly to the accountable organization can be counterproductive - it can cause justifiable resentment in public officials who feel "blindsided" by the media attention on an issue about which they had no prior warning. Also, be aware that if the problem is associated with criminal drug or gang activity, attracting media attention that results in your being the featured interview subject can put you in a position where your personal safety is more at risk.
 - **Start legal action against the property owner.** Citizens harmed by a nuisance property can also pursue lawsuits directly. In the final analysis, even the most negligent property owners will take action when they are made to understand fully that it will cost more money to ignore the problem than it will to stop it. The legal options for this type of approach vary substantially by jurisdiction. In general, this is not an easy process to pursue and should be considered only as a last resort. Again, the vast majority of neighborhood problems can be solved without having to go through the time and expense of legal action.

WHEN THE TENANT MOVES OUT

When a resident notifies you that she or he is moving out, arrange a date and time for a final inspection. You should also inspect and secure the property if the home is padlocked, and again eleven days after padlocking. Take photographs if there is visible damage, debris, or if there are other visible problems.

When possible, walk through the property with the tenant, and have a copy of the initial inspection for both yourself and the tenant. Make written notes of any visible damage, what needs to be cleaned, and any items that need to be removed. Inform the tenant of those things, and if time permits, allow the tenant to resolve them.

Keep the property secured. Obtain the keys from the resident, or give written instruction about how to return keys. Change the locks every time you change tenants! It is best not to make it obvious that a place is vacant, so removal of window coverings is not recommended. Contact local law enforcement about increased patrolling if the home is going to be vacant for more than a few days.

NEW LAW: The Tenant Security Deposit law has been amended. The general rule is that within 30 days after a tenant moves out, the landlord must refund the deposit or send the former tenant an *itemized statement* about any money withheld from the deposit.

As of **October 1, 2009**, the law establishes that if a home is damaged and the extent cannot be assessed within 30 days, the landlord may inform the tenant accordingly, send an interim accounting and obtain a one-time 30 day extension. This new law should not be understood to mean that deposit refunds are due in 60 days.

The law also provides that "willful failure of a landlord to comply with the deposit, bond, or notice requirements of this Article shall void the landlord's right to retain any portion of the tenant's security deposit." A photocopy of the new law is attached at the end of the Manual, as an Appendix item.

TENANTS IN FORECLOSED PROPERTIES

If you know that a rental property is in foreclosure, it is a courtesy to inform the resident. The resident will need to know to whom to pay rent, or whether and when to move, and who will arrange for request a security deposit refund.

North Carolina law provides that once a tenant receives the Clerk's formal notice about the foreclosure sale date, the tenant has the right to end the lease by giving 10 days notice to you.

A tenant may not have to move. New federal law states that on or after May 20, 2009, if a tenant has been renting a place that is sold at a foreclosure sale, once the sale process is completed and the buyer has title, then the buyer becomes the tenant's landlord. The buyer may choose to continue the tenant's lease.

If the buyer decides to end the lease, the buyer **must** give **any** tenant 90 days' notice of lease termination. A buyer who plans to move in and use the home as her or his primary residence must give the tenant 90 days' notice to move.

Otherwise, if the lease has not ended, the resident may stay and pay rent until the end of the lease. The lease and rent do not change during the 90 days.

NOTE: If the tenant has a lease with a fixed ending date and the time is not up, **OR** if the tenant has a Section 8 Housing Choice Voucher, and if the tenant pays the rent and does not breach the lease, the new landlord cannot evict the tenant until the lease ends.

A photocopy of the new federal law is attached at the end of this Manual, as an Appendix item.

Chapter 9: THE ROLE OF THE POLICE

Building an effective partnership.

Unless noted, quotes are from landlords or professional property managers.

Note that some "complaints" contain inaccurate assumptions about legal rights or procedure.

COMPLAINTS WE HAVE HEARD:

"The problem is the police won't get rid of these people when we call. We've had dealers operating in one rental home for four months. The other residents are constantly kept up by the activity - even as late as 2:00 or 3:00 in the morning on weeknights."

"I called police about one of my properties. They wouldn't even confirm that anyone suspected activity at the place. A month later they raided the house. Now I'm stuck with repair bills from the raid. If they had just told me what they knew, I could have done something."

ADVICE WE WERE GIVEN:

"In almost every case, when the police raid a drug house, there is a history of compliance violations *unrelated to the drug activity* for which an active landlord would have evicted the resident."

- Drug Unit detective

"Even our ultimate action against a drug operation in a rental - the raid and arrest of the people inside - will not solve a landlord's problem, because the residents retain a legal right to occupy the property. *It's still the residents' home* until they move out or the landlord evicts them. And, as is often the case, those people do not go to jail, or do not stay in jail long."

- Drug Unit detective

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Chapter 9: THE ROLE OF THE POLICE

Building an effective partnership.

THE BASICS

Know how to work with the system to ensure rapid problem resolution. Have a working knowledge of how your local law enforcement agency deals with drug problems in residential neighborhoods.

DEFINING THE ROLES: LANDLORDS AND POLICE

It is a common misconception that law enforcement agencies can evict residents involved in illegal activity. In fact, only the landlord has the authority to evict; the police don't. The police may arrest people for *criminal* activity. But arrest, by itself, has no bearing on a resident's right to possess your property.

Eviction, on the other hand, is a *civil* process. The landlord sues the resident for possession of the property. Note the differences in level of proof required: Victory in civil court requires "a preponderance of evidence" - the scales must tip, however slightly, in your favor. Criminal conviction requires proof "beyond a reasonable doubt" - a much tougher standard. Therefore, you may find yourself in a position where you have enough evidence to *evict* your residents, but the police do not have enough evidence to *arrest and convict* them. Further, even if the police arrest your residents, and a court convicts them, you still must evict them through a summary ejection process in order to regain possession of the premises. Otherwise upon release, they have the right to return to and occupy your property.

Many landlords are surprised to discover the degree of power they have to close drug rentals and eliminate their threat to the neighborhood. As one police captain put it, "Even our ultimate action against a drug operation in a rental - the raid and arrest of the people inside - will not solve a landlord's problem, because the residents retain a legal right to occupy the property. *It's still the residents' home* until they move out or the landlord evicts them. And, as is often the case, those people do not go to jail, or do not stay in jail long." It's surprising, but the person with the most power to stop the impact of an individual "drug house" operation in a neighborhood is the property owner - the landlord. Ultimately, the landlord can remove all residents in a rental home. The police can't.

The only time law enforcement may get involved in eviction is to enforce the *outcome* of your civil proceeding. For example, when a court issues a judgment requiring a resident to move out and the resident refuses, the landlord can go to the Durham County Sheriff's Office and request that the resident be physically removed. But until that point, law enforcement cannot get directly involved in the eviction process. The police may be able to provide information or other support appropriate to the situation - such as testifying at the trial or eviction hearing, providing records of search warrant results, or standing by while you serve notice.

Again, criminal arrest and civil eviction are unrelated - the only connection being the possibility of subpoenaing an arresting officer or using conviction records as evidence in an eviction trial. No matter how serious a crime your residents have committed, eviction remains your responsibility.

WHAT TO EXPECT

Police officers are paid, and trained, to deal with dangerous criminal situations. They are experts in enforcing criminal law. They are not authorities in civil law. As such, if you have residents involved in illegal activity, while you should inform the police, do not make the common but inaccurate assumption that you can “turn the matter over to the authorities” and they will “take it from there.” The landlord and tenant laws are enforced only by the civil courts. When it comes to removal of a resident, landlords must take civil legal action.” With that in mind, you will get best results from the police by providing any information you can for their criminal investigation, while requesting any supporting evidence you can use for your civil proceeding.

In order to get the best cooperation, remember the rule of working with any bureaucracy: *The best results can be achieved by working one-on-one with the same contact.* Further, while this rule applies to working with any bureaucracy, it is especially important for working with a law enforcement agency where, if police personnel share information with the wrong people, they could ruin an investigation or even endanger the life of an officer. If an officer doesn't know you, the officer may be hesitant to give you information about suspected activity at your rental property.

Your best approach, therefore, is to make an appointment to speak with a drug officer in person or to call your district sub-station and arrange to speak directly with an officer who patrols the district where your rental property is located. You should also notify that District Commander of the problem you are experiencing. There can be a huge difference between the type of information available through a single, anonymous phone call and the amount of assistance possible if you arrange an in-person meeting.

The type of assistance possible will vary with the situation - from advice about what to look for on your property, to documentation and testimony in your eviction proceeding. But remember that it is not the obligation of the police to collect information necessary for you to evict problem residents. While you can get valuable assistance from the police, don't wait for the police to develop an entire criminal case before taking action. If neighbors are complaining that you have drug activity or other dangerous situations in your rental, investigate the problem and resolve it as quickly as possible (see the previous chapter on *Crisis Resolution*). Do *not* assume that the situation at your rental home must be under control simply because the police have yet to serve a search warrant at the property.

CRIMINAL ACTIVITY AND THE LAW

In North Carolina, if you knowingly allow your property to be used for prostitution, illegal gambling, illegal drug usage, drug dealing, drug manufacturing or many other forms of criminal activity, you risk criminal prosecution, civil litigation and forfeiture of property. If you are screening your residents with care, enforcing your rental agreements, and in apartments, encouraging a sense of healthy community among your good residents, it is unlikely that such laws will ever be used against you or your property.

Chapter 10: THE HOUSING CHOICE VOUCHER PROGRAM (Section 8)

Unless noted, quotes are from landlords or professional property managers.

Note that some "complaints" contain inaccurate assumptions about legal rights or procedure.

ADVICE WE WERE GIVEN:

"Few landlords realize it, but you can screen a subsidized applicant the same way you screen any applicant. Most don't screen subsidized applicants for rental history - either because they don't know they can, or because they are too excited about the guaranteed rent check."

"For landlords the message is simple. Bottom line, if you screen your residents, Housing Choice Vouchers is a very good program."

- A Housing Choice Voucher Program Director

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Chapter 10: THE HOUSING CHOICE VOUCHER PROGRAM (Section 8)

The U.S. Department of Housing and Urban Development (HUD) has programs that assist families, individuals, elderly or disabled persons of limited income in the payment of their monthly rent. The term "Section 8" refers to a number of federal subsidy programs that allow people of limited means to rent housing. The resident pays a portion of the rent, while the federal government pays the rest. The Section 8 program is under the control of the U.S. Department of Housing and Urban Development (HUD) and administered locally by Public Housing Agencies (PHAs).

THE BASICS

Understand the legal and practical differences between publicly subsidized and private renting.

SOME BENEFITS

The most important benefit of participating in the Housing Choice Voucher program is that, if done responsibly, it helps the entire community. Those landlords who meet their responsibilities and require Housing Choice Voucher residents to do the same provide a valuable service - by renting decent housing to good citizens who otherwise could not afford it. In addition to the satisfaction of serving the public good, landlords can enjoy additional direct benefits for their business:

1. **Reliable rent.** A large portion of the rent, and sometimes all of it, is guaranteed by the federal government, so once the paperwork is processed, you'll get the subsidy portion on time, every month. Also, assuming you screen your applicants responsibly, your residents should be able to pay *their* portion on time since the amount is predetermined to be within their means.
2. **"Fair Market Rent."** HUD and local Public Housing Agencies work to ensure that subsidized rents do not exceed comparable private rentals in the area. For landlords who are not aware that higher rents are more typical, it may be a pleasant surprise to have support to raise your rates. Those who are charging rates comparable to other nearby rentals will receive similar amounts under the Housing Choice Voucher Program. Those who attempt to "lead" the market in price may suffer somewhat.

SOME MISCONCEPTIONS

Public Housing Agencies prescreen their participants along the same guidelines that a landlord should use.

True and False. In operating the conventional public housing program, the Housing Authority of the City of Durham (DHA) is the administrator for HUD. In its role as HUD administrator, the Authority probably screens more thoroughly than most landlords. DHA checks public housing applicant's criminal backgrounds for all family members 18 years of age and above, pulls credit reports, verifies past landlord histories, checks for registered sex offenders, verifies social security numbers through a national registry and denies admission to anyone who left an unpaid balance with any of DHA's housing programs.

In operating the Housing Choice Voucher program, DHA has a role that is significantly different than its role as administrator of conventional public housing. DHA screens Housing Choice Voucher applicants primarily for financial eligibility and other program eligibility criteria. DHA requires a criminal background check for all adults in the household.

It is the responsibility of the landlord to further screen applicants. You must make sure they can pay the remainder of the rent, check their rental record through previous landlords, and run all other checks the same way you would with a private renter. You are not only legally permitted to, you are *expected to*. Screening applicants subsidized or not, is both your right and your responsibility: You are entitled to turn down Housing Choice Voucher applicants who do not meet your screening criteria and accept those who do. Even guaranteed rent is not worth it, if for example, the applicant's rental history indicates they are a poor risk to abide by the terms of the lease.

As one program manager put it, "For landlords the message is simple. Bottom line, if you screen your residents in a manner consistent with Fair Housing Laws, Section 8 is a very good program."

Landlords who rent to housing choice voucher participants must use the Public Housing Agency's model lease.

False. HUD guidelines (developed in 1995) are designed to make it easier for the landlord to use the same lease that is used for non-subsidized residents. The landlord will be required to obtain DHA's approval of the lease and use a HUD lease addendum provided by DHA, which adds to and/or modifies some of the conditions of the lease that the landlord typically uses with non-subsidized residents. These modifications deal primarily with program eligibility factors. DHA can provide a model lease agreement and will generally refer you to apartment associations for this assistance.

Residents who have Housing Choice Vouchers cannot be evicted.

False. This misconception arises primarily from confusion about the types of notices that must be served on a subsidized resident. While it is true that often a Housing Choice Voucher lease will forbid the use of "no-cause" or "non-renewal" notices, in general, all "for-cause" notices still apply. So, for example, if a resident is violating the terms of the lease or damaging the property, a landlord can serve a for-cause notice upon the resident. Such a notice must follow particular guidelines, and therefore it is best to seek legal assistance to ensure your notice complies with applicable laws and regulations. New HUD regulations now permit landlords in many areas to use a lease that will permit "no-cause" terminations *after* the first year. That does not appear to be an option in North Carolina. Following the notice to the tenant and DHA any grievance or cure period, the landlord must file an action of summary ejectment to evict the resident. Your best approach, as with any eviction, is to speak with an experienced Landlord/Tenant attorney before starting the process. Generally speaking, legal causes for lease termination apply to Housing Choice Voucher recipients as they do to everyone else.

With respect to how the eviction process works with the Housing Choice Voucher program, the landlord should be aware that there are situations where a resident may be evicted from a rental home and still keep their Housing Choice Voucher. Of course, a resident can lose Housing Choice Voucher participation and stay on as a tenant if they can pay the rent. The landlord must

also understand that the housing authority is not a party to the lease agreement and cannot evict anyone in any situation. **ONLY** the landlord can evict a resident.

If you evict residents for drug activity, the local Public Housing Agency (PHA) will simply let the same people rent again elsewhere.

False. HUD guidelines allow local PHAs to terminate assistance to residents involved in the manufacture, sale, distribution, possession, or use of illegal drugs. The “One Strike You Are Out” rule applies to residents participating in federally assisted housing programs (i.e. Section 8). The same guidelines also apply to residents involved in violent criminal activity. The regulations do not require a conviction for drugs or violent crime. It is sufficient to prove by a preponderance of the evidence that a resident or occupant has engaged in criminal activity. This is why it is important to supply written documentation of complaints and also provide witness testimony at the informal hearing. This evidence will enable the housing authority to uphold the termination of assistance. Furthermore, anyone terminated from the Housing Choice Voucher program for violent criminal activity or drugs cannot even reapply for assistance for five years. DHA has expanded its policies to give landlords more guidance and support to terminate assistance for community disruption and repeated lease violations.

TERMINATING HOUSING CHOICE VOUCHER PARTICIPATION

DHA will terminate assistance for families who cause a disruption in a neighborhood, but there must be evidence of a pattern of problems. If the tenant is a Housing Choice Voucher participant, make sure that DHA receives letters from you, your neighbors (who may remain anonymous) and copies of any police reports on file. However, it is *not* unusual for a disgruntled boyfriend or friend to attempt to cause a family to lose Housing Choice Voucher assistance in retaliation for some disagreement. For this reason, DHA generally requires a police report, several letters from neighbors, landlord complaints and problems on more than one occasion. Housing Choice Voucher assistance can be terminated based on an arrest. Conviction is not required.

By federal law, terminations involve additional required steps to ensure due process. These procedures are not required by state law and do not apply to private rental contracts. Any time DHA acts to terminate assistance, the residents have a right to an informal grievance hearing at DHA. At the hearing, the hearing officer, who is an independent entity contracted by DHA, hears the evidence from both DHA and the tenant, to include witness testimony. A DHA staff person does not have to be present at the hearing, however, if further information is needed by staff members, witnesses, landlord, or tenant, it will be validated by the hearing officer. Letters of complaint, police testimony about police calls for service and incident reports, witness testimony and other collaborating evidence are considered.

Furthermore, it is important to understand that it is possible for DHA to terminate Housing Choice Voucher subsidy while the lease remains in effect, but **ONLY** the landlord can evict the family and terminate the lease agreement.

Chapter 11: ROOMING HOUSES

This manual is intended as a guide to community-oriented property management. It should not be regarded as legal advice.

If you need legal advice, contact a skilled Landlord/Tenant attorney.

Chapter 11: ROOMING HOUSES

BASIC OVERVIEW

The City of Durham regulates rooming houses, boarding houses, bed and breakfast inns, residency hotels and other similar businesses and structures located within the city. The city's Code of Ordinances regulates and refers to a rooming house as follows. Section 6-155 A **"rooming house"** may be defined as a house, dwelling building or structure, which was originally constructed as a single-family dwelling that now contains a room or rooms. *Each room shall be numbered in a plain and conspicuous manner*, the number is to be placed on the outside of the door and no two rooms shall bear the same number. Every establishment covered *under this section shall be provided with a kitchen that is in a location accessible to all rooming units and that meets the requirements* of section 6-154(a) (4). At least one (1) toilet, lavatory basin and bath tub or shower, properly connected to water and sewer in good working condition shall be supplied within a room which affords privacy for each eight (8) persons or a fraction thereof residing within an establishment covered under this section 6-155(k).

There are also zoning regulations that govern rooming houses. For any zoning inquiries, you may contact the Department of Zoning and Planning at 101 City Hall Plaza or (919)560-4137.

Each operator of a rooming house must receive a privilege license from the City of Durham's Treasury and Business License Division before operating a rooming house. The City of Durham's Treasury and Business License Division can advise you whether a regulatory license is required. The licensing process starts with the City of Durham's Treasury and Business License Division, which is also located at 101 City Hall Plaza or 560-4700.

A rooming house or similar businesses and buildings must comply with **applicable zoning laws, The Minimum Housing Code and fire prevention code regulations.** The City of Durham Department of Neighborhood Improvement Services is responsible for inspecting each rooming house located within the city. The City of Durham's Code Enforcement Division telephone number is 919-560-1NIS (1647). The department is located at 807 East Main Street, Building 2, 3rd Floor, Suite 300.

If you are considering operating a rooming house, boarding house, bed and breakfast inn or residency hotel, we strongly recommend that you consult with the following for inspections and advice about how to operate your business in a lawful, safe way:

- ☒ The Durham City/County Planning and Zoning Department
- ☒ The Durham City Neighborhood Improvement Services Department
- ☒ The Durham City Fire Department
- ☒ Your insurance agent
- ☒ A reputable local attorney in private practice. To locate a lawyer, you may contact the North Carolina Bar Association Lawyer Referral Service at 1-800-662-7660, and be referred to a lawyer in good standing who will provide a brief consultation for a \$30.00 fee.

Violation of the ordinances regulating rooming houses found in *Article VI Durham Code 150-158* may be enforced through civil and criminal penalties and injunctive action.

Chapter 12: CODE ENFORCEMENT PROCEDURES

Minimum standards with maximum enforcement.

This manual is intended as a guide to community-oriented property management.

It should not be regarded as legal advice.

If you need legal advice, contact a skilled Landlord/Tenant attorney.

Chapter 12: CODE ENFORCEMENT PROCEDURES

Minimum standards with maximum enforcement.

WHO ENFORCES THE MINIMUM HOUSING CODE?

Housing Specialists or Code Inspectors enforce the Minimum Housing Code (MHC) under the authority of the Housing Code Administrator, whose responsibility is to investigate dwelling conditions to determine if they are fit for human habitation as defined under the MHC.

STANDARD ENFORCEMENT PROCESSES

The Code enforcement officer enforces the MHC through a standardized and public administrative process, and through the courts. This process varies depending upon the type of violation(s) being addressed. Processes falling under the MHC include:

- ☒ MHC housing processes
- ☒ Board and Clean
- ☒ Weedy lot/Junk and Debris
- ☒ Junked, Abandoned, and/or Hazardous Vehicles
- ☒ Unsafe Building

DEFINITIONS OF STANDARD ENFORCEMENT PROCESSES

Abandoned Vehicle

Is left on any street or highway for longer than seven days; or is left on property owned or operated by the City for longer than twenty four (24) hours; or is left on private property without the consent of the owner, occupant, or lessee thereof for longer than two (2) hours.

Board and Clean

Vacant and/or abandoned structures which may contain junk and debris and be accessible to the general public.

Hazardous Vehicle

A breeding ground or harbor for mosquitoes or other insects, snakes rats or other pests; or a point of growth and or other vegetation over (12) inches in height; or a point of collection for pools of water, concentration of gas oil or other hazardous materials; or so located that there is a danger of the vehicle falling or turning over; or a place in which debris, bottles or other solid waste is discarded and is present within the vehicle; or. the creation of another similar condition(s) or circumstance(s) which exposes the general public to safety or health hazards.

Junked Vehicle

Is partially dismantled or wrecked; or cannot be self propelled or move in the manner which it was originally intended to move; or is more than (5) years old and appears to be worth less than one hundred dollars (\$100.00).

Repair Only

Structures with estimated repair less than 50% of the assessed tax value.

Repair or Demolish

Structures with estimated repairs exceeding 50% of the assessed tax value.

Weedy Lot/Junk and Debris

Unmaintained accumulations of dense weeds, grass, vines or briars over twelve (12) inches in height, and within either one hundred (100) feet of an abutting public street or fifty (50) feet of a primary residential structure, not including detached accessory structures, shall be prohibited if deemed to constitute a public nuisance by the Administrator. A public nuisance in this provision is defined as conditions that serve as a harborage for rodents, vermin, mosquitoes and other pests and represents a detriment, danger or hazard to the health, safety and welfare of the residents of the city's jurisdiction. Such accumulations of growth shall be cleared and cut to no more than six (6) inches in height.

Unsafe Building Condemnation

Every building that shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad conditions of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of the building.

Although the time and processes vary according to violation type, the basic process is outlined below:

OVERVIEW OF THE MINIMUM HOUSING CODE PROCESS**Step 1: Inspection**

Inspections may be initiated by:

- ☒ Owners
- ☒ Tenant complaints; or
- ☒ CENAT (*Code Enforcement Nuisance Abatement Team*) a multi-departmental proactive team that combines the enforcement powers of zoning, police, housing, solid waste, inspections and other city departments. This team conducts inspections in designated neighborhoods; or
- ☒ Code Inspectors; or
- ☒ By petition from five residents of the City of Durham, 18 years of age or older.

During the inspection process, the code enforcement officer inspects residential structures to see if the unit has any violations of the minimum housing code. If no violations are found then the case is closed. If violations are found the code enforcement officer proceeds to step 2 of the housing code process.

Step 2: Title Search

The title search process establishes a legal chain of conveyance for real property. The search determines the legal name and address of the owners and the parties in interest to ensure proper notification. Parties in interest that require notification may include but are not limited to:

- ☒ Trustees under Deeds of Trust,
- ☒ Judgment creditors,
- ☒ Lien holders, heirs,
- ☒ Possessors (tenants), and
- ☒ Property owners

Step 3: Complaint and Notice

The complaint and notice (C & N) provide the property owner with a list of the MHC violations and establishes a hearing date 30 days from the mailing of the letter. At this step in the process a notice of lis Pendens is filed at the office of the Clerk of Court. This will give notice of the pending legal action to creditors and potential buyers of the residence. If the process involves an unsafe building violation, parties in interest have only 10 days from the C & N mailing date to request a hearing.

Step 4: Service of Complaint and Notice

The complaint and notice must be delivered to owners and all parties in interest by:

- ☒ First class mail
- ☒ Certified or registered mail
- ☒ In person
- ☒ By publication
- ☒ Posting on the property

To obtain proper service to property owner(s), notices must be sent certified or registered mail and regular mail. If either is claimed by, the owner service will be deemed sufficient. In instances where the owner(s) of the property are unknown, and the code enforcement officer has exercised reasonable diligence to locate the owner, the officer may serve the complaint and notice as well as the finding of fact and order by publication in a newspaper that has general circulation in the city.

When service is made by publication, notices of the pending proceeding shall be posted in a conspicuous place on the premises.

Notice of violation

In weedy lots and junk and debris processes, owners are given 10 days from the receipt of the notice to request an administrative hearing and 15 days to comply with the notice. If the owner fails to comply with the requirements of the notice of violation, the clean up will be bid out to a contractor and the cost of the work performed will be placed as a lien on the property.

Step 5: Hearing

A hearing is conducted to allow consideration by the Housing Code Administrator or her/his designee any statements or evidence presented by the property owner, NIS staff and other parties in interest. Information presented at the hearing includes but is not limited to:

- ☒ the date of inspection, dates of letters sent, date complaint and notice.
- ☒ evidence of receipt of complaint and notice
- ☒ detailed descriptions of code deficiencies including photos, location, and estimated cost to repair
- ☒ detailed work plan
- ☒ repairs made by the owner

Step 6: Service of Finding of Fact

The Finding of Fact and Order for a Demolition process and the Unsafe building process each establish a 60-day period in which the owner must bring the property into compliance with the MHC. The Finding of Fact for a “repair only” process establishes a 30-day deadline for compliance.

The Finding of Fact and Order includes:

- ☒ Evidence
- ☒ An order to bring the property into compliance
- ☒ A compliance date or date of expiration
- ☒ Any fines and penalties the owner may be subject to in the event of noncompliance
- ☒ Appeal deadline

An owner can appeal the Code Administrator's decision after the C & N and after the Finding of Fact issuance. There are two authorities that can review appeals: Housing Appeals Board (HAB), and the courts, through the Community Life Court.

The HAB is a quasi-judicial board that is appointed by the City Council. The HAB hears cases in which repairs costs exceed 50% of the assessed tax value of the property.

Step 7: Civil Penalties

Civil Penalties begin to accrue on a property after the expiration of the Finding of Fact at a rate of 100.00 for the first day of non-compliance and 10.00 day for each additional day. Refer to section 6-158 Enforcement for current civil penalty amounts.

Step 8: Ordinance

If the property owner(s) fails to comply with an Order to Repair or Demolish a structure, the MHC, Administrator or her/his designee may present the case to the Housing Appeals Board to obtain an order to demolish the structure.

Step 9: Demolition and Lien

With approval from the HAB, a demolition order maybe issued for properties that fail to come into compliance with the order to repair or demolish. Once the City has bid out the demolition and the services are complete then a lien is placed on the property for the cost of services rendered. The property owner is also responsible for any applicable fines and penalties that have been accrued due to noncompliance with the Order.

Minimum housing code violators may also be taken to Community Life Court:

Community Life Court (CLC) is a criminal court that City and County agencies utilize for noncompliance cases that involve violation of local and state codes, including those related to housing, fire, solid waste, building, and zoning standards. CLC rules on housing cases with estimated repair costs that are less than 50% of the assessed tax value. CLC also hears severe weedy lot and junk vehicle cases. CLC has the power to impose fines and imprison violators for noncompliance with state and local codes.

Final Step: Compliance

The MHC process is complete when the property is brought into compliance with the minimum housing code. Once the property is in compliance with the MHC the owner will receive a certificate of completion.

<http://www.municode.com/resources/gateway.asp?pid=10312&sid=33>.

Chapter 13: IMPACT TEAM, SOLID WASTE, ZONING, PUBLIC WORKS (STORMWATER), WATER MANAGEMENT

Minimum standards with maximum enforcement.

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Impact Team

BASIC OVERVIEW

Core Services

Core services include cleanup of illegal dump sites on City property, mowing and cleanup of City-owned vacant lots, cleanup around City's eight (8) recycling centers; removal of graffiti on public property and private property to support the Police Gang Unit, and removal of "setout" on right of way.

The Impact Team Division sponsors an eight (8) week summer youth employment program to supplement litter removal by street cleaning.

Each year the Impact Team Division responds to request from the PAC (Partner Against Crime), and neighborhood associations to coordinate neighborhood cleanups. This event is a series of Saturday cleanups for City residents and residential property owners to dispose of materials that are not accepted at curbside waste collection.

During Durham's Annual Great American Cleanup,. Durham residents can clean up their homes and the community on Saturdays throughout a month in the spring of each year. Residents will have the chance to swap reusable items and dispose of accumulated household debris at the City's Waste Disposal and Recycling Center, 2115 E. Club Boulevard.

Guidelines

Participation in Durham's Great American Cleanup is free to city residents who bring acceptable items in cars, pickup trucks and trailers less than eight feet in length.

Acceptable items include yard waste, trash, garbage, broken appliances, broken furniture and tires (off rims). Household Hazardous Waste (HHW) is only accepted at the HHW Center, 1900 E. Club Boulevard.

Shingles are not accepted.

Tipping fees will apply to loads brought in commercial vehicles, cargo trucks, stake-bodied trucks, moving vans, trucks and trailers over eight feet in length at a fee of \$39.50 per ton for trash, \$24 per ton for yard debris.

All uncovered loads are subject to a fine.

For more information about Durham's Great American Cleanup, contact Durham One Call at (919) 560-1200.

Solid Waste

BASIC OVERVIEW

The mission of the Solid Waste Management Department is to manage the municipal solid waste, household hazardous waste, recyclables, and disposal services in a manner that is environmentally sound, cost-effective, and safe. Below are some of the code sections that have been sited.

Section 58

Article I - In General:

58-3. No non-city collection of garbage/recyclables set out for city collection

58-4. Private refuse hauling vehicle must be approved by county health department

58-5. Refuse disposal within city subject to direction of director and county health department

58-6. No loose dogs on garbage collection day that results in dogs turning over containers and scattering contents

Article II - Receptacles:

58-31. Households, stores, etc. must provide proper receptacles as defined in SWM rules unless the city provides them

58-32. The director must provide roll-out garbage collection and stationary container collection

58-33. Receptacles must be substantial metal or plastic, watertight, and with tight-fitting covers and strong handles

58-34. Receptacles with defects liable to hamper or injure collectors shall not be used and shall promptly be replaced

58-35. Receptacles must be constructed and maintained to prevent the entrance of flies

58-36. No deliberate damage to a cart or bin provided by the city

58-37. The director can authorize centralized collection locations to single-family detached subdivisions that qualify for roll-out collection

58-38. The director can authorize stationary container collection to developments that qualify for roll-out collection, at roll-out cost

58-65. The following must use stationary containers:

- Customers who generate more than 4 roll-out carts of garbage
- Multi-family dwellings under 55-66

Locations as determined by the director for specified reasons
Commercial developments with 4 or more businesses

58-66. Multi-family dwellings in any development with at least one building with 5 or more units must use stationary container facilities - the required numbers are specified
Condo and townhome developments receiving backyard collection in 1992 are grandfathered and can receive either stationary container or roll-out collection

58-67. Multi-family requirements apply to all new construction

58-68. Location of stationary containers must meet certain criteria

58-69. The director can grant variances of the stationary container requirements for specified reasons after hearing/application

Article III - Preparation, etc. of Refuse and Recyclables For Collection

58-97. All garbage must be in bags; no liquid; recyclables must be separated from garbage and placed in separate bin for collection; no recyclables in garbage receptacle

58-98. Yard waste must be in biodegradable paper bags or yard waste carts or in bundles no longer than 4 feet long/18 inches in diameter/75 lbs/no single piece of wood more than 6 inches in diameter.

58-99. Large amounts of tree and shrub trimmings will be handled under SWM rules and for a fee

58-100. No use of stationary containers by people who do not own or occupy the property

58-101. Animal litter must be placed in a securely tied bag

58-102. Hypodermic syringes and needles must be placed in puncture-resistant cartons with tight fitting lids

58-103. Separate receptacles must be used for recyclables collected by the city or city's contractor

58-104. Recycling drop-off centers may be used only for depositing types of recyclables collected by the city/city's contractor, and they must be clean

58-105. All stationary containers reserved for recyclables must be used for that purpose only; no mixing of refuse with recyclables

Article IV - Removal, Disposition, etc.

58-124. Garbage etc. in proper receptacles and at accessible locations shall be removed under regulations of the director and subject to this article

58-125. Collection schedules shall be determined by the director

Businesses that generate more than 2 cubic yards of refuse each week (approx. 4 roll-out carts) must use stationary containers

- 58-126. Refuse of all kinds must be placed outside of buildings at easily accessible locations
- 58-127. All businesses must set out their refuse at locations set by the director
- 58-128. Collectors must exercise reasonable care and not willfully injure receptacles
- 58-129. The city is not responsible for kitchen receptacles placed with regular waste receptacles
- 58-130. No receptacle shall be placed or remain on any public street or sidewalk on Sunday or any non-collection day or otherwise than as prescribed by the director
- 58-131. Downtown collection - no garbage etc. on the street except between 6:30-9:00 a.m.; no receptacle left out after 10 a.m.
- 58-132. No unauthorized person can meddle with a receptacle or its contents
- 58-133. The city removes dead animals from public property for free and from private property for a fee set by council; no large animals
- 58-134. All recyclables handled by the city/city's contractor must be placed in a recycling bin and set on the curb for collection
- 58-152. No hazardous refuse collection by city; responsible person must transport to city disposal facility for proper disposal
- 58-153. No manufacturing, wholesaling, assembly, or processing refuse collected by the city
- 58-154a. No building materials or construction, demolition, repair, contractor, or landscape gardener refuse collected by the city
- 58-154b. Contractors must remove refuse from jobs
- 58-154c. Tree surgeons must remove refuse from jobs
- 58-155. Stable manure must be removed by the stable maintenance staff
- 58-156. No tires will be collected by the city; responsible person must transport to city disposal facility for proper disposal
- 58-181. Private haulers may use the city disposal facility subject to rules and conditions
- 58-182. All materials properly delivered to the city disposal facility become property of the City of Durham
- 58-183. No person shall remove materials from the disposal center unless authorized by the director
- 58-184. Disposal center hours of operation are set by the director; disposal cannot occur outside of those hours

58-185. The city is not responsible for injuries to people or vehicles, except city staff and vehicles, at the waste disposal facility

58-186. City council may set tipping fees; the city manager may create billing for regular customers

58-187. Tipping fee is double if load has target recyclables.

58-188. City council may set civil penalties for violations.

Zoning Enforcement

BASIC OVERVIEW

The Zoning Enforcement Division of the Durham City-County Planning Department oversees the enforcement of Unified Development Ordinance.

Most Common Enforcement Issues:

1. Vehicles parked off the designated driveway and within street yards in residential districts. All vehicles should be parked in the designated driveway area. This does not apply to townhouses and apartments. (Section 10.2.3 Vehicles Permitted in Residential Districts and Uses)
2. Off premise signs and signs attached to utility poles are prohibited. Example, yard sale signs, lost pet signs, and for rent signs located away from the property. (Section 11.3 Prohibited Signs)
3. No more than three unrelated individuals can occupy a dwelling unit per the definition of family. (Section 16.3 Defined Terms)

Where some or all of the occupants are unrelated by blood, marriage, or adoption, the total number of occupants that are unrelated, shall not exceed three. In applying this provision, children who are under the age of 23 and who are children of the owner or a person renting an entire dwelling unit from the owner shall be counted as a single occupant.

4. Businesses being run from a home shall be permitted only with an approved home occupation permit, which can be applied for in the Planning Department. (Section 5.4.4 Home Occupations)
5. Agricultural uses are not usually permitted. For example, keeping livestock such as goats, chickens, and sheep; there are a few instances where the use is allowed in certain residential areas. (Section 5.1.2 Use Table)
6. Up to two vehicles may be repaired simultaneously on a residential property if the vehicles are registered to an occupant of the residence. (Section 5.4.10 Vehicle Repair)
7. Vehicle sales shall be prohibited within a residential district or on property devoted to residential use, except that the sale of a private vehicle registered to the occupant of the residence shall be allowed. No more than one such vehicle shall be displayed at a time and must meet designated parking guidelines. (Section 5.4.11 Vehicles Sales)

8. Domestic and Recreational vehicles such as boats, camper trailers and utility trailers shall be stored off the street and out of the street and side yard areas. (Section 10.2.3 Vehicles Permitted in Residential Districts and Uses)
9. Fences: There are fence height restrictions, depending on the location of the fence. (Section 9.9 Fences and Walls)
10. Parking of heavy equipment or tractor trailers shall not be allowed except as permitted in section 5.4.4 (Home Occupation). This requirement shall not prohibit commercial vehicles from making deliveries in a residential district. (Section 10.2.3 Vehicles Permitted in Residential Districts and Uses)

Penalties

The Planning Director, or designee, may issue one or more civil penalties for violations of up to \$500.00. If the violator does not pay the civil penalty, the governing entity may collect it in court through civil action in the nature of debt.

Public Works Stormwater Services Division

BASIC OVERVIEW

The Stormwater Services Division of the Public Works Department oversees the enforcement of the City's Pollution Control Ordinance. This is one part of the effort we make to meet our obligations to citizens and the State to improve the water quality of local streams and lakes.

Most Common Enforcement Issues:

1. Automotive fluid spills from leaking vehicles and vehicle maintenance performed in the parking lot. Spills must be cleaned up promptly using "dry clean up" procedures. Prohibit vehicle maintenance in parking lots. (Article V, Section 70-511)
2. Improperly stored chemicals. Store chemicals in sheltered areas away from storm drains and waterways (such as ditches and creeks). Keep storage lids tightly closed when not in use. Replace or repair storage containers as needed. (Article V, Section 70-517)
3. Vehicle wash water entering the storm drainage system. Disallow vehicle washing in parking lots OR collect and route water to the sanitary sewer system. (Article V, Section 70-511)
4. Sanitary sewer overflows. Educate tenants that grease should not be poured into sinks. Inspect sewer lines regularly.
5. Illegal dumping. No paint, cleaning products, grease, leaves, garbage, dirt, etc. should be dumped or swept into streets or storm drains. (Article V, Section 70-511)
6. The property owner is responsible for maintaining above and below ground drainage systems on the property. (Article V, Section 70-531)
7. If there is a spill on your property that could result in an illicit discharge, you are required to immediately take action to contain the spill. You must also notify the Stormwater Services Division within one working day at 560-SWIM. (Article V, Section 70-511)

Penalties:

Multiple parties may be held responsible for violations. This includes tenants, property managers, and landowners. Violations may result in civil penalties of up to \$500 per day for residential properties and up to \$2,000 per day for non-residential properties. (Article V, Section 70-540)

Stormwater Billing:

Property owners, not tenants, are responsible for paying the stormwater utility bill. (Article VIII, Section 23-204)

Water Management

Fats, Oils, and Greases Program (FOG)

BASIC OVERVIEW

The Industrial Pretreatment Program oversees the administration of the FOG Program. When wastewater pipes become blocked by oil and grease, a common result may be sewer overflows. Sewer overflows can have potentially serious environmental health impacts. The easiest way to help prevent overflows is to minimize grease disposal into the collection system from homes and restaurants.

Why is Grease a Problem?

Grease is singled out for special attention because of its poor solubility in water and its tendency to separate from the liquid solution.

Large amounts of oil and grease in wastewater can cause problems in collection system pipes. Grease sticks to the insides of sewer pipes, both on your property and in the streets. This decreases pipe capacity and, therefore, requires that piping systems be cleaned more often and/or replaced sooner than otherwise expected. Oil and grease also hamper effective treatment at the wastewater treatment plant.

Any type of grease, whether from businesses or residences can cause serious problems that may result in raw sewage backups and overflows in your homes or in the street. Sewer overflows pollute our rivers and streams, increase our risk to coming in contact with disease-causing organisms, and increase the costs of operation and maintenance of sewer lines and wastewater treatment.

Residents can help reduce these risks by following these simple DO's and DON'T's:

DO

- Collect cooking oil & grease in containers and dispose of it properly (used residential cooking oil can be properly disposed of at the City's Waste Disposal and Recycling Center at no cost)
- Remove oil and grease from kitchen utensils, equipment, and food preparation areas with scraper/towels/broom
- Keep grease out of wash water
- Place food scraps in a waste container for solid wastes

DON'T

- Pour oil or grease down the drain.
- Wash fryers/griddles, pots/pans, and plates with water until oil and grease are removed
- Use hot water to rinse grease off surfaces
- Use the drain as a means to dispose of food scraps

Remember: The drain is not a trash can! Educate tenants that grease should not be poured into sinks. Inspect sewer lines regularly.

Prevent Fats, Oil, and Grease From Entering Creeks and Streams Through the Storm Drain System

Cover outdoor grease and oil storage containers.

- Uncovered grease and oil storage containers can collect rainwater. Since grease and oil float, the rainwater can cause an overflow unto the ground. Such an overflow will eventually reach the storm water system and nearby streams. The discharge of grease and oil to the storm drain system will degrade the water quality of receiving streams by adding biological and chemical oxygen demand to the stream. Discharge of grease and oil to the storm drain might also result in legal penalties or fines.

Observe storage areas for signs of oil and grease.

Inspect containers for covers.

Remove covers to ensure containers have not overflowed or contain excess water.

Locate grease dumpsters and storage containers away from storm drain catch basins.

Penalties:

Sanitary Sewer Users may be held responsible for violations. Violations may result in civil penalties of up to \$25,000.00 per day per violation.

Appendix: ORDINANCES

*This manual is intended as a guide to community-oriented property management.
It should not be regarded as legal advice.
If you need legal advice, contact a skilled Landlord/Tenant attorney.*

Appendix: DURHAM CITY CODE OF ORDINANCES

CITY OF Durham “FAIR HOUSING ORDINANCE”

Fair Housing Ordinance No. 1976 – 330 – 5

The City of Durham “Fair Housing Ordinance” safeguards all individuals within the city from discrimination in housing opportunities because of **race, color, religion, national origin, or sex**; thereby to protect their interest in personal dignity and freedom from humiliation; to secure the City against domestic strife and unrest which would menace its democratic institutions; to preserve the public health and general welfare; and to further the interests, rights and privileges of individuals within the city.

For more information about the Fair Housing Ordinance, contact Community Services at (919) 560-4107 ext. 246.

CITY OF DURHAM CODES

For a complete listing of the City of Durham Code of Ordinances, go to:

[http:// www.durhamnc.gov/departments/nis/](http://www.durhamnc.gov/departments/nis/)

Below are some of the codes cited.

Sec. 6-157. Responsibilities of owners.

- (a) *Prohibited occupancy.* No owner shall occupy or lease or permit the subletting to another for occupancy any vacant or vacated dwelling, dwelling unit or rooming unit which does not comply with the provisions of this article, nor shall any owner let to another any vacant dwelling, dwelling unit or rooming unit unless it is reasonably clean, sanitary and fit for human occupation.
- (b) *Number of occupants.* Every owner or agent of an owner shall advise, in writing, the tenant leasing or subletting property owned by him of the maximum number of occupants permitted in the dwelling, dwelling unit or rooming unit leased or rented.
- (c) *Sanitary maintenance.* Every owner of a multi-family dwelling containing four (4) or more dwelling units and every owner of a rooming house, residency hotel or other establishment covered by section 6-155 shall be responsible for maintaining in a clean and sanitary condition the shared or public areas of the dwelling and premises thereof. A clean and sanitary condition shall include, but is not limited to, the following:
 - (1) The exterior property areas of all premises shall be kept free of objects and materials, including abandoned or immobile motor vehicles, which may create a hazard to the health and safety of the occupants or surrounding community or which is a public nuisance.
 - (2) All sheds, barns, garages, fences and other appurtenant structures standing on the premises shall be kept in good repair.
 - (3) All yard spaces and other open areas adjacent to the dwelling shall be sloped, paved or otherwise constructed to properly drain water around or away from the premises.

(4) All required screens shall be furnished and installed in the dwelling and shall be maintained in good condition.

(5) Any high grass and noxious weeds shall be kept mowed or cut to a height of not more than six (6) inches.

(d) *Garbage and rubbish.* For every multi-family dwelling containing four (4) or more dwelling units and any rooming house, residency hotel or other establishment covered by section 6-155, the owner shall provide, in a location accessible to all dwelling occupants, an adequate number of receptacles or a stationary bulk refuse container into which garbage and rubbish from the dwelling unit or rooming unit receptacles may be emptied for storage between the days of collection as required by Chapter 10 of the Durham City Code. Any stationary bulk refuse container provided by the owner shall meet all of the capacity specifications as stated in Chapter 10 of the Durham City Code.

The area surrounding the receptacles provided by the owner or the stationary bulk refuse container shall be maintained in such a way as to prevent the scattering of garbage or refuse on the ground.

(e) *Removal of required services, facilities, etc.* No owner or agent of an owner shall cause any service, facility, equipment or utility, which is required under this article, to be removed or shut off from, or discontinued for, any occupied housing let or occupied by him, except for such temporary interruption as may be necessary while actual repairs or alterations are in process, or during temporary emergencies when discontinuance of service is approved by the administrator.

(f) *Ratproofing and pest extermination.* Every owner of a multi-family dwelling containing two (2) or more dwelling units and every owner of a rooming house, residency hotel or other establishment covered by section 6-155 shall be responsible for the extermination of any insects, rodents, or other pests in all dwelling units or rooming units therein and in the shared public areas of the dwelling and premises thereof. Such extermination shall include, but is not limited to the following:

(1) Preventing the entrance by blocking or stopping up all passages, by which rats may secure entry from the exterior with rat impervious material;

(2) Preventing the interior infestation by rat stoppage, harborage removal, the paving of basements, cellars and any other areas which are in contact with the soil, and such cleanliness as may be necessary to eliminate rat breeding places.

(3) Providing screens or such other devices for basement windows which might provide a point of entry for rodents.

(g) *Cleanliness of sidewalks, alleys, and gutters.* The owner of any premises bordering any street, lane or alley shall not allow garbage or rubbish to be deposited into the street, gutters, or alleys abutting the premises.

The owner or operator of any dwelling containing more than one dwelling unit and the owner of any rooming house, residency hotel or other establishment covered by section 6-155 shall maintain in a clean and sanitary condition, free of garbage, rubbish, bulk trash, or other offensive material, both that portion of the sidewalk and the gutter that abuts the property and that portion of any alley that abuts the property and is bound by the property lines of the adjoining properties and the mid-point of such alley.

(Ord. No. 10064, § 2, 2-7-94)

AOC-CVM-201. Complaint in Summary Ejectment

<p>File No. _____</p> <p style="text-align: center;">COMPLAINT IN SUMMARY EJECTMENT</p> <p style="text-align: center;"><small>G.S. 7A-216, 7A-232; Ch. 42, Art. 3 and 7</small></p> <p>Name And Address Of Plaintiff _____</p> <p>Social Security No./Taxpayer ID No. _____</p> <p>County _____ Telephone No. _____</p> <p style="text-align: center;">VERSUS</p> <p>Name And Address Of Defendant 1 <input type="checkbox"/> Individual <input type="checkbox"/> Corporation _____</p> <p>County _____ Telephone No. _____</p> <p>Name And Address Of Defendant 2 <input type="checkbox"/> Individual <input type="checkbox"/> Corporation _____</p> <p>County _____ Telephone No. _____</p> <p>Name And Address Of Plaintiff's Attorney Or Agent _____</p>	<p style="text-align: center;">STATE OF NORTH CAROLINA</p> <p style="text-align: center;">_____ County</p> <p style="text-align: right;">In The General Court Of Justice District Court Division-Small Claims</p> <p>1. The defendant is a resident of the county named above.</p> <p>2. The defendant entered into possession of premises described below as a lessee of plaintiff.</p> <p>Description Of Premises (Include Location) _____</p> <p> <input type="checkbox"/> Conventional <input type="checkbox"/> Public Housing <input type="checkbox"/> Section 8 </p> <p> Rate Of Rent \$ _____ per <input type="checkbox"/> Month <input type="checkbox"/> Week Date Rent Due _____ Date Lease Ended _____ Type Of Lease <input type="checkbox"/> Oral <input type="checkbox"/> Written </p> <p>3. <input type="checkbox"/> The defendant failed to pay the rent due on the above date and the plaintiff made demand for the rent and waited the 10-day grace period before filing the complaint.</p> <p><input type="checkbox"/> The lease period ended on the above date and the defendant is holding over after the end of the lease period.</p> <p><input type="checkbox"/> The defendant breached the condition of the lease described below for which re-entry is specified.</p> <p><input type="checkbox"/> Criminal activity or other activity has occurred in violation of G.S. 42-63 as specified below.</p> <p>Description Of Breach/Criminal Activity (give names, dates, places and illegal activity) _____</p> <p>4. The plaintiff has demanded possession of the premises from the defendant, who has refused to surrender it, and the plaintiff is entitled to immediate possession.</p> <p>5. The defendant owes the plaintiff the following:</p> <p>Description Of Any Property Damage _____</p> <table style="width: 100%;"> <tr> <td>Amount Of Damage (If Known) \$ _____</td> <td>Amount Of Rent Past Due \$ _____</td> <td>Total Amount Due \$ 0.00</td> </tr> </table> <p>6. I demand to be put in possession of the premises and to recover the total amount listed above and daily rental until entry of judgment plus interest and reimbursement for court costs.</p> <p>Date _____ Signature Of Plaintiff/Attorney/Agent _____</p> <p style="text-align: center;">CERTIFICATION WHEN COMPLAINT SIGNED BY AGENT OF PLAINTIFF</p> <p>I certify that I am an agent of the plaintiff and have actual knowledge of the facts alleged in this Complaint.</p> <p>Date _____ Signature _____</p>	Amount Of Damage (If Known) \$ _____	Amount Of Rent Past Due \$ _____	Total Amount Due \$ 0.00
Amount Of Damage (If Known) \$ _____	Amount Of Rent Past Due \$ _____	Total Amount Due \$ 0.00		

AOC-CVM-201. Rev. 10/04
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(Over)

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

1. The PLAINTIFF must file a small claim action in the county where at least one of the defendants resides.
2. The PLAINTIFF cannot sue in small claims court for more than \$5,000.00 excluding interest and costs.
3. The PLAINTIFF must show the complete name and address of the defendant to ensure service on the defendant. If there are two defendants and they reside at different addresses, the plaintiff must include both addresses. The plaintiff must determine if the defendant is a corporation and sue in the complete corporate name. If the business is not a corporation, the plaintiff must determine the owner's name and sue the owner.
4. The PLAINTIFF may serve the defendant(s) by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, addressed to the party to be served or by paying the costs to have the sheriff serve the summons and complaint. If certified or registered mail is used, the plaintiff must prepare and file a sworn statement with the Clerk of Superior Court proving service by certified mail and must attach to that statement the postal receipt showing that the letter was accepted.
5. In filling out number 3 in the complaint, if the landlord is seeking to remove the tenant for failure to pay rent when there is no written lease, the first block should be checked. (Defendant failed to pay the rent due on the above date and the plaintiff made demand for the rent and waited the ten (10) day grace period before filing the complaint.) If the landlord is seeking to remove the tenant for failure to pay rent when there is a written lease with an automatic forfeiture clause, the third block should be checked. (The defendant breached the condition of the lease described below for which re-entry is specified.) And "failure to pay rent" should be placed in the space for description of the breach. If the landlord is seeking to evict tenant for violating some other condition in the lease, the third block should also be checked. If the landlord is claiming that the term of the lease has ended and the tenant refuses to leave, the second block should be checked. If the landlord is claiming that criminal activity occurred, the fourth block should be checked and the conduct must be described in space provided.
6. The PLAINTIFF must pay advance court costs at the time of filing this Complaint. In the event that judgment is rendered in favor of the plaintiff, court costs may be charged against the defendant.
7. The PLAINTIFF must appear before the magistrate to prove his/her claim.
8. The DEFENDANT may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court. This answer should be accompanied by a copy for the plaintiff and be filed no later than the time set for trial. The filing of the answer DOES NOT relieve the defendant of the need to appear before the magistrate to assert the defendant's defense.
9. The PLAINTIFF or the DEFENDANT may appeal the magistrate's decision in this case. To appeal, notice must be given in open court when the judgment is entered, or notice may be given in writing to the Clerk of Superior Court within ten (10) days after the judgment is entered. If notice is given in writing, the appealing party must also serve written notice of appeal on all other parties. The appealing party must PAY to the Clerk of Superior Court the costs of court for appeal within twenty (20) days after the judgment is entered.
10. If the defendant appeals and wishes to remain on the premises the defendant must also post a stay of execution bond within ten (10) days after the judgment is entered.
11. This form is supplied in order to expedite the handling of small claims. It is designed to cover the most common claims.
12. **The Clerk or magistrate cannot advise you about your case or assist you in completing this form. If you have any questions, you should consult an attorney.**

AOC-CVM-401. Judgment in Action for Summary Ejectment

File No. Film No. Judgment Docket Book And Page No.	Abstract No.	STATE OF NORTH CAROLINA _____ County		In The General Court Of Justice District Court Division-Small Claims												
JUDGMENT IN ACTION FOR SUMMARY EJECTMENT G.S. 7A-210(2), 7A-224; 42-30		This action was tried before the undersigned on the cause stated in the complaint. The record shows that the defendant was given proper notice of the nature of the action and the date, time and location of trial.														
Name And Address Of Plaintiff		FINDINGS														
Social Security No./Taxpayer ID No.		The Court finds that: 1. <input type="checkbox"/> a. the plaintiff has proved the case by the greater weight of the evidence. <input type="checkbox"/> b. the plaintiff has failed to prove the case by the greater weight of the evidence. 2. the defendant(s) <input type="checkbox"/> was <input type="checkbox"/> was not present at trial. <input type="checkbox"/> The defendant was served by posting. 3. <input type="checkbox"/> a. there is no dispute as to the amount of rent in arrears, and the amount is \$ _____. <input type="checkbox"/> b. there is an actual dispute as to the amount of rent in arrears. The defendant(s) claims the amount of rent in arrears is \$ _____, and this amount is the undisputed amount of rent in arrears. 4. Other: _____														
County Telephone No.		ORDER														
VERSUS		It is ORDERED that: <input type="checkbox"/> 1. the defendant(s) be removed from and the plaintiff be put in possession of the premises described in the complaint. <input type="checkbox"/> 2. this action be dismissed with prejudice. <input type="checkbox"/> 3. this action be dismissed with prejudice because the defendant tendered the rent due and the court costs of this action. <input type="checkbox"/> 4. the plaintiff recover rent of the defendant(s) in the amount and at the rate listed below, plus other damages in the amount indicated. The plaintiff is also entitled to interest on the total principal sum from this date until the judgment is paid. <input type="checkbox"/> 5. Other: (specify) _____														
Name And Address Of Defendant 1		<input type="checkbox"/> 6. Costs of this action are taxed to the <input type="checkbox"/> plaintiff. <input type="checkbox"/> defendant.														
County Telephone No.		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;"> Rate Of Rent <input type="checkbox"/> Mo. <input type="checkbox"/> Wk. </td> <td style="width: 20%;"> Amt. Of Rent In Arrears (Owed To Date) </td> <td colspan="2" style="width: 40%;"> <input type="checkbox"/> Judgment Announced And Signed In Open Court </td> </tr> <tr> <td> \$ _____ per _____ </td> <td> \$ _____ </td> <td style="width: 20%;"> Date </td> <td style="width: 20%;"> Signature Of Magistrate </td> </tr> <tr> <td colspan="2"> Amount Of Other Damages \$ _____ </td> <td colspan="2"> Name Of Party Announcing Appeal In Open Court </td> </tr> </table>			Rate Of Rent <input type="checkbox"/> Mo. <input type="checkbox"/> Wk.	Amt. Of Rent In Arrears (Owed To Date)	<input type="checkbox"/> Judgment Announced And Signed In Open Court		\$ _____ per _____	\$ _____	Date	Signature Of Magistrate	Amount Of Other Damages \$ _____		Name Of Party Announcing Appeal In Open Court	
Rate Of Rent <input type="checkbox"/> Mo. <input type="checkbox"/> Wk.	Amt. Of Rent In Arrears (Owed To Date)	<input type="checkbox"/> Judgment Announced And Signed In Open Court														
\$ _____ per _____	\$ _____	Date	Signature Of Magistrate													
Amount Of Other Damages \$ _____		Name Of Party Announcing Appeal In Open Court														
Name And Address Of Defendant 2		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;"> TOTAL AMOUNT </td> <td style="width: 40%;"> \$ 0.00 </td> </tr> </table>			TOTAL AMOUNT	\$ 0.00										
TOTAL AMOUNT	\$ 0.00															
County Telephone No.		CERTIFICATION														
Name And Address Of Plaintiff's Attorney		(NOTE: To be used when magistrate does not announce and sign this Judgment in open court at the conclusion of the trial.) I certify that this Judgment has been served on each party named by depositing a copy in a post-paid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.														
Date		Signature Of Magistrate														

Appendix: NORTH CAROLINA GENERAL STATUTES

NORTH CAROLINA STATE STATUTES

For a complete listing of North Carolina State Statutes on Landlord/Tenant Law, go to:
http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_42.html

Electronic versions of all North Carolina State Statutes can be found at: www.ncleg.net.

Below are some of the statutes cited in the training manual:

N.C.G.S. § 42-14. Notice to quit in certain tenancies.

A tenancy from year to year may be terminated by a notice to quit given one month or more before the end of the current year of the tenancy; a tenancy from month to month by a like notice of seven days; a tenancy from week to week, of two days. Provided, however, where the tenancy involves only the rental of a space for a manufactured home as defined in G.S. 143-143.9(6), a notice to quit must be given at least 30 days before the end of the current rental period, regardless of the term of the tenancy. (1868-9, c. 156, s. 9; Code, s. 1750; 1891, c. 227; Rev., s. 1984; C.S., s. 2354; 1985, c.541.)

N.C.G.S. § 42-14. Notice to quit in certain tenancies.

A tenancy from year to year may be terminated by a notice to quit given one month or more before the end of the current year of the tenancy; a tenancy from month to month by a like notice of seven days; a tenancy from week to week, of two days. Provided, however, where the tenancy involves only the rental of a space for a manufactured home as defined in G.S. 143-143.9(6), a notice to quit must be given at least 60 days before the end of the current rental period, regardless of the term of the tenancy. (1868-9, c. 156, s. 9; Code, s. 1750; 1891, c. 227; Rev., s. 1984; C.S., s. 2354; 1985, c. 541; 2005-291, s. 1.)

N.C.G.S. § 25-3-506. Collection of processing fee for returned checks.

A person who accepts a check in payment for goods or services or his assignee may charge and collect a processing fee, not to exceed twenty-five dollars (\$25.00), for a check on which payment has been refused by the payor bank because of insufficient funds or because the drawer did not have an account at that bank.

If a collection agency collects or seeks to collect on behalf of its principal a processing fee as specified in this section in addition to the sum payable of a check, the amount of such processing fee must be separately stated on the collection notice. The collection agency shall not collect or seek to collect from the drawer any sum other than the actual amount of the returned check and the specified processing fee. (1981, c. 781, s. 1; 1983, c. 529; 1987, c. 147; 1991, c. 455, s. 1; 1995, c. 232, s. 1; 1997-334, s. 1; 2000-118, s. 1.)

N.C.G.S. § 42-46. Late fees.

(a) In all residential rental agreements in which a definite time for the payment of the rent is fixed, the parties may agree to a late fee not inconsistent with the provisions of this subsection, to be chargeable only if any rental payment is five days or more late. If the rent:

- (1) Is due in monthly installments, a landlord may charge a late fee not to exceed fifteen dollars (\$15.00) or five percent (5%) of the monthly rent, whichever is greater.
- (2) Is due in weekly installments, a landlord may charge a late fee not to exceed four dollars (\$4.00) or five percent (5%) of the weekly rent, whichever is greater.
- (3) Is subsidized by the United States Department of Housing and Urban

Development, by the United States Department of Agriculture, by a State agency, by a public housing authority, or by a local government, any late fee shall be calculated in accordance with subdivisions (1) and (2) of this subsection on the tenant's share of the contract rent only, and the rent subsidy shall not be included.

(b) A late fee under this section may be imposed only one time for each late rental payment. A late fee for a specific late rental payment may not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default.

(c) Any provision of a residential rental agreement contrary to the provisions of this section is against the public policy of this State and therefore void and unenforceable.

(d) A lessor shall not charge a late fee to a lessee because of the lessee's failure to pay for water or sewer services provided pursuant to G.S. 62-110(g). (1987, c. 530, s. 1; 2001-502, s. 4; 2003-370, s. 1; 2004-143, s. 5.)

N.C.G.S. § 42-25.9. Remedies.

(a) If any lessor, landlord, or agent removes or attempts to remove a tenant from a dwelling unit in any manner contrary to this Article, the tenant shall be entitled to recover possession or to terminate his lease and the lessor, landlord or agent shall be liable to the tenant for damages caused

by the tenant's removal or attempted removal. Damages in any action brought by a tenant under this Article shall be limited to actual damages as in an action for trespass or conversion and shall not include punitive damages, treble damages or damages for emotional distress.

(g) Ten days after being placed in lawful possession by execution of a writ of possession, a landlord may throw away, dispose of, or sell all items of personal property remaining on the premises, except that in the case of the lease of a space for a manufactured home as defined in G.S.

143-143.9(6), G.S. 44A-2(e2) shall apply to the disposition of a manufactured home with a current value in excess of five hundred dollars (\$500.00) and its contents by a landlord after being placed in lawful possession by execution of a writ of possession. During the 10-day period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this Chapter. Upon the tenant's request prior to the expiration of the 10-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. If the landlord elects to sell the property at public or private sale, the landlord shall give written notice to the tenant by first-class mail to the tenant's last known address at least seven days prior to the day of the sale. The seven-day notice of sale may run concurrently with the 10-day period which allows the tenant to request possession of the property. The written notice shall state the date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment of unpaid rents, damages, storage fees, and sale costs, shall be disbursed to the tenant, upon request, with 10 days after the sale, and will thereafter be delivered to the government of the county in which the rental property is located. Upon the tenant's request prior to the day of sale, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. The landlord may apply the proceeds of the sale to the unpaid rents, damages, storage fees, and sale costs. Any surplus from the sale shall be disbursed to the tenant, upon request, within 10 days of the sale and shall thereafter be delivered to the government of the county in which the rental property is located.

Appendix: NEW STATE STATUES

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2009

SESSION LAW 2009-279 SENATE BILL 661

AN ACT AUTHORIZING LESSORS OF CONTIGUOUS PREMISES TO ALLOCATE THE **COST FOR WATER AND SEWER SERVICE** TO EACH TENANT USING EQUIPMENT THAT MEASURES HOT WATER USAGE, REQUIRING LANDLORDS TO IMPROVE THE HABITABILITY OF DWELLING UNITS BY **REPAIRING CERTAIN UNSAFE CONDITIONS, STAYING THE EXECUTION OF A JUDGMENT** FOR SUMMARY EJECTMENT WHILE A MOTION FOR MODIFICATION OF THE UNDERTAKING IS PENDING, ESTABLISHING **FEEES FOR ADMINISTRATIVE SERVICES** IN RESIDENTIAL TENANCIES, AND ESTABLISHING THE CIRCUMSTANCES UNDER WHICH A **CITY MAY ORDER A DWELLING TO BE VACATED AND CLOSED**.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-110(g) reads as rewritten:

"(g) In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, for the purpose of encouraging water conservation, the Commission may, consistent with the public interest, adopt procedures that allow a lessor to charge for the costs of providing water or sewer service to persons who occupy the same contiguous premises. The following provisions shall apply:

- (1) All charges for water or sewer service shall be based on the user's metered consumption of water, which shall be determined by metered measurement of all water ~~consumed and not by any partial measurement of water consumption, unless specifically authorized by the Commission.~~consumed. The rate charged by the lessor shall not exceed the unit consumption rate charged by the supplier of the service.
- (1a) If the contiguous premises were built prior to 1989 and the lessor determines that the measurement of the tenant's total water usage is impractical or not economical, the lessor may allocate the cost for water and sewer service to the tenant using equipment that measures the tenant's hot water usage. In that case, each tenant shall be billed a percentage of the landlord's water and sewer costs for water usage in the dwelling units based upon the hot water used in the tenant's dwelling unit. The percentage of total water usage allocated for each dwelling unit shall be equal to that dwelling unit's individually submetered hot water usage divided by all submetered hot water usage in all dwelling units. The

following conditions apply to billing for water and sewer service under this subdivision:

- a. A lessor shall not utilize a ratio utility billing system or other allocation billing system that does not rely on individually submetered hot water usage to determine the allocation of water and sewer costs.
- b. The lessor shall not include in a tenant's bill the cost of water and sewer service used in common areas or water loss due to leaks in the lessor's water mains. A lessor shall not bill or attempt to collect for excess water usage resulting from a plumbing malfunction or other condition that is not known to the tenant or that has been reported to the lessor.
- c. All equipment used to measure water usage shall comply with guidelines promulgated by the American Water Works Association.
- d. The lessor shall maintain records for a minimum of 12 months that demonstrate how each tenant's allocated costs were calculated for water and sewer service. Upon advanced written notice to the lessor, a tenant may inspect the records during reasonable business hours.
- e. Bills for water and sewer service sent by the lessor to the tenant shall contain all the following information:
 1. The amount of water and sewer services allocated to the tenant during the billing period.
 2. The method used to determine the amount of water and sewer services allocated to the tenant.
 3. Beginning and ending dates for the billing period.
 4. The past-due date, which shall not be less than 25 days after the bill is mailed.
 5. A local or toll-free telephone number and address that the tenant can use to obtain more information about the bill.

...."

SECTION 2. G.S. 42-34(b) reads as rewritten:

"(b) During an appeal to district court, it shall be sufficient to stay execution of a judgment for ejectment if the defendant appellant pays to the clerk of superior court any rent in arrears as determined by the magistrate and signs an undertaking that he or she will pay into the office of the clerk of superior court the amount of the tenant's share of the contract rent as it becomes due periodically after the judgment was entered and, where applicable, comply with subdivision (c) below. For the sole purpose of determining the amount of rent in arrears pursuant to a judgment for possession pursuant to G.S. 42-30(iii), the magistrate's determination shall be based upon (i) the available evidence presented to the magistrate or (ii) the amounts listed on the face of the filed Complaint in Summary Ejectment. Provided however, when the magistrate makes a finding in the record, based on evidence presented in court, that there is an actual dispute as to the amount of rent in arrears that is due and the magistrate specifies the specific amount of rent in arrears in dispute, in order to stay execution of a judgment for ejectment, the defendant appellant shall not be required to pay to the clerk of superior court the amount of rent in arrears found by the magistrate to be in dispute, even if the magistrate's judgment includes this amount in the amount of rent found to be in arrears. If a defendant appellant appeared at the hearing before the magistrate and the magistrate found an amount of rent in arrears that was not in dispute, and if an attorney representing the defendant appellant on appeal to the district court signs a pleading stating that there is evidence of an actual dispute as to the amount of rent in arrears, then the defendant appellant shall not be required to pay the rent in arrears alleged to be in dispute to stay execution of a judgment for ejectment pending appeal. Any magistrate, clerk, or district court judge shall order stay of execution upon the defendant appellant's paying the undisputed rent in arrears to the clerk and signing the undertaking. If either party disputes the amount of the payment or the due date in the undertaking, the aggrieved party may move for modification of the terms of the undertaking before the clerk of superior court or the district court. Upon such motion and upon notice to all interested parties, the clerk or court shall hold a hearing within 10 calendar days of the date the motion is filed and determine what modifications, if any, are appropriate. No writ of possession or other execution of the magistrate's judgment shall take place during the time the aggrieved party's motion for modification is pending before the clerk of court."

SECTION 3. G.S. 42-42(a) is amended by adding a new subdivision to read as follows:

"§ 42-42. Landlord to provide fit premises.

(a) The landlord shall:

...

(8) Within a reasonable period of time based upon the severity of the condition, repair or remedy any imminently dangerous condition on the premises after acquiring actual knowledge or receiving notice of the condition. Notwithstanding the landlord's repair or remedy of any imminently dangerous condition, the landlord may recover from the tenant the actual and reasonable costs of repairs that are the fault of the tenant. For purposes of this subdivision, the term "imminently dangerous condition" means any of the following:

- a. Unsafe wiring.
- b. Unsafe flooring or steps.
- c. Unsafe ceilings or roofs.
- d. Unsafe chimneys or flues.
- e. Lack of potable water.
- f. Lack of operable locks on all doors leading to the outside.
- g. Broken windows or lack of operable locks on all windows on the ground level.
- h. Lack of operable heating facilities capable of heating living areas to 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from November 1 through March 31.
- i. Lack of an operable toilet.
- j. Lack of an operable bathtub or shower.
- k. Rat infestation as a result of defects in the structure that make the premises not impervious to rodents.
- l. Excessive standing water, sewage, or flooding problems caused by plumbing leaks or inadequate drainage that contribute to mosquito infestation or mold."

SECTION 4. G.S. 42-46 reads as rewritten:**"§ 42-46. ~~Late fees.~~ Authorized fees.**

(a) In all residential rental agreements in which a definite time for the payment of the rent is fixed, the parties may agree to a late fee not inconsistent with the provisions of this subsection, to be chargeable only if any rental payment is five days or more late. If the rent:

- (1) Is due in monthly installments, a landlord may charge a late fee not to exceed fifteen dollars (\$15.00) or five percent (5%) of the monthly rent, whichever is greater.
- (2) Is due in weekly installments, a landlord may charge a late fee not to exceed four dollars (\$4.00) or five percent (5%) of the weekly rent, whichever is greater.
- (3) ~~Is subsidized by the United States Department of Housing and Urban Development, by the United States Department of Agriculture, by a State agency, by a public housing authority, or by a local government, any late fee shall be calculated in accordance with subdivisions (1) and (2) of this subsection on the tenant's share of the contract rent only, and the rent subsidy shall not be included.~~

(b) A late fee under ~~this subsection (a) of this section~~ may be imposed only one time for each late rental payment. A late fee for a specific late rental payment may not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default.

(c) ~~Any provision of a residential rental agreement contrary to the provisions of this section is against the public policy of this State and therefore void and unenforceable.~~

(d) A lessor shall not charge a late fee to a lessee pursuant to subsection (a) of this section because of the lessee's failure to pay for water or sewer services provided pursuant to G.S. 62-110(g).

(e) Complaint-Filing Fee. – Pursuant to a written lease, a landlord may charge a complaint-filing fee not to exceed fifteen dollars (\$15.00) or five percent (5%) of the monthly rent, whichever is greater, only if the tenant was in default of the lease, the landlord filed and served a complaint for summary ejectment and/or money owed, the tenant cured the default or claim, and the landlord dismissed the complaint prior to judgment. The landlord can include this fee in the amount required to cure the default.

(f) Court-Appeal Fee. – Pursuant to a written lease, a landlord may charge a court-appearance fee in an amount equal to ten percent (10%) of the monthly rent only if the tenant was in default of the lease; the landlord filed, served, and prosecuted successfully a complaint for summary ejectment and/or monies owed in the small claims court; and neither party appealed the judgment of the magistrate.

(g) Second Trial Fee. – Pursuant to a written lease, a landlord may charge a second trial fee for a new trial following an appeal from the judgment of a magistrate. To qualify for the fee, the landlord must prove that the tenant was in default of the lease and the landlord prevailed. The landlord's fee may not exceed twelve percent (12%) of the monthly rent in the lease.

- (h) Limitations on Charging and Collection of Fees.
- (1) A landlord who claims fees under subsections (e) through (g) of this section is entitled to charge and retain only one of the above fees for the landlord's complaint for summary ejectment and/or money owed.
 - (2) A landlord who earns a fee under subsections (e) through (g) of this section may not deduct payment of that fee from a tenant's subsequent rent payment or declare a failure to pay the fee as a default of the lease for a subsequent summary ejectment action.
 - (3) It is contrary to public policy for a landlord to put in a lease or claim any fee for filing a complaint for summary ejectment and/or money owed other than the ones expressly authorized by subsections (e) through (g) of this section, and a reasonable attorney's fee as allowed by law.
 - (4) Any provision of a residential rental agreement contrary to the provisions of this section is against the public policy of this State and therefore void and unenforceable.
 - (5) If the rent is subsidized by the United States Department of Housing and Urban Development, by the United States Department of Agriculture, by a State agency, by a public housing authority, or by a local government, any fee charged pursuant to this section shall be calculated on the tenant's share of the contract rent only, and the rent subsidy shall not be included."

SECTION 5. G.S. 42-52 reads as rewritten:**"§ 42-52. Landlord's obligations.**

Upon termination of the tenancy, money held by the landlord as security may be applied as permitted in G.S. 42-51 or, if not so applied, shall be refunded to the tenant. In either case the landlord in writing shall itemize any damage and mail or deliver same to the tenant, together with the balance of the security deposit, no later than 30 days after termination of the tenancy and delivery of possession ~~by the tenant, of the premises to the landlord.~~ If the extent of the landlord's claim against the security deposit cannot be determined within 30 days, the landlord shall provide the tenant with an interim accounting no later than 30 days after termination of the tenancy and delivery of possession of the premises to the landlord and shall provide a final accounting within 60 days after termination of the tenancy and delivery of possession of the premises to the landlord. If the tenant's address is unknown the landlord shall apply the deposit as permitted in G.S. 42-51 after a period of 30 days and the landlord shall hold the balance of the deposit for collection by the tenant for at least six months. The landlord may not withhold as damages part of the security deposit for conditions that are due to normal wear and tear nor may the landlord retain an amount from the security deposit which exceeds his actual damages."

SECTION 6. G.S. 42-55 reads as rewritten:**"§ 42-55. Remedies.**

If the landlord or the landlord's successor in interest fails to account for and refund the balance of the tenant's security deposit as required by this Article, the tenant may institute a civil action to require the accounting of and the recovery of the balance of the deposit. The willful failure of a landlord to comply with the deposit, bond, or notice requirements of this Article shall void the landlord's right to retain any portion of the tenant's security deposit as otherwise permitted under G.S. 42-51. In addition to other remedies at law and equity, the tenant may recover damages resulting from noncompliance by the landlord; and upon a finding by the court that the party against whom judgment is rendered was in willful noncompliance with this Article, ~~the court may, in its discretion, allow a reasonable attorney's fee to the duly licensed attorney representing the prevailing party, such attorney's fee to be taxed as part of the cost of court.~~ such willful noncompliance is against the public policy of this State and the court may award attorney's fees to be taxed as part of the costs of court."

SECTION 7. G.S. 160A-443 reads as rewritten:**"§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of public officer.**

Upon the adoption of an ordinance finding that dwelling conditions of the character described in G.S. 160A-441 exist within a city, the governing body of the city is hereby authorized to adopt and enforce ordinances relating to dwellings within the city's territorial jurisdiction that are unfit for human habitation. These ordinances shall include the following provisions:

...

- (3) That if, after notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order,
 - a. If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human ~~habitation or to vacate and close the dwelling as a human habitation; or habitation.~~ The order may require that the property be vacated and closed only if continued occupancy during the time allowed for repair will present a significant threat of bodily harm, taking into account the nature of the necessary repairs, alterations, or improvements; the current state of the property; and any additional risks due to the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities. The order shall state that the failure to make timely repairs as directed in the order shall make the dwelling subject to the issuance of an unfit order under subdivision (4) of this section; or
 - b. If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified in the order, to remove or demolish such dwelling. However, notwithstanding any other provision of law, if the dwelling is located in a historic district of the city and the Historic District Commission determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160A-400.14(a).
- (4) That, if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause the dwelling to be repaired, altered or improved or to be vacated and closed; that the public officer may cause to be posted on the main

entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a Class 1 misdemeanor. The duties of the public officer set forth in this subdivision shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. This ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

- (5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished. The duties of the public officer set forth in this subdivision ~~subdivisions (4) and (5)~~ shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code. This ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

- (5a) If the governing body shall have adopted an ~~ordinance~~, ordinance as provided in subdivision (4) of this section, or the public officer shall have:

- a. In a municipality located in counties which have a population in excess of 71,000 by the last federal census (including the entirety of any municipality located in more than one county at least one county of which has a population in excess of 71,000), other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the ~~owner has vacated and closed such dwelling and kept such dwelling~~ has been vacated and closed for a period of one year pursuant to the ordinance or order;
- b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the ~~owner has vacated and closed such dwelling and kept such dwelling~~ has been vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

- a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or
- b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision only applies to municipalities located in counties which have a population in excess of 71,000 by the last federal census (including the entirety of any municipality located in more than one county at least one county of which has a population in excess of 71,000).

[This subdivision does not apply to the local government units listed in subdivision (5b) of this section.]

- (5b) If the governing body shall have adopted an ~~ordinance~~, ordinance as provided in subdivision (4) of this section, or the public officer shall have:

- a. In a municipality other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the ~~owner has vacated and closed such dwelling and kept such dwelling has been~~ vacated and closed for a period of one year pursuant to the ordinance or order;
- b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be

repaired or vacated and closed, as provided in subdivision (3)a., and if the ~~owner has vacated and closed such dwelling and kept such dwelling~~ has been vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

- a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or
- b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision applies to the Cities of Eden, Lumberton, Roanoke Rapids, and Whiteville, to the municipalities in Lee County, and the Towns of Bethel, Farmville, Newport, and Waynesville only.

(6) Liens. —

- a. That the amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of this Chapter.
- b. If the real property upon which the cost was incurred is located in an incorporated city, then the amount of the cost is also a lien on any other real property of the owner located within the city limits or within one mile thereof except for the owner's primary

- residence. The additional lien provided in this sub-subdivision is inferior to all prior liens and shall be collected as a money judgment.
- c. If the dwelling is removed or demolished by the public officer, he shall sell the materials of the dwelling, and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.
- (7) If any occupant fails to comply with an order to vacate a dwelling, the public officer may file a civil action in the name of the city to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such dwelling. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the public officer produces a certified copy of an ordinance adopted by the governing body pursuant to subdivision (5) authorizing the officer to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the execution of such judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the governing body has ordered the public officer to proceed to exercise his duties under subdivisions (4) and (5) of this section to vacate and close or remove and demolish the dwelling.
 - (8) That whenever a determination is made pursuant to subdivision (3) of this section that a dwelling must be vacated and closed, or removed or demolished, under the provisions of this section, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such

notice shall be given before removal or demolition by action of the public officer, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The public officer or clerk shall certify the mailing of the notices, and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the public officer to wait 45 days before causing removal or demolition."

SECTION 8. This act becomes effective October 1, 2009, and Sections 1 and 4 of this act apply to leases entered into on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 11:07 a.m. this 10th day of July, 2009

Appendix: NEW FEDERAL LAW

THE WHITE HOUSE

Office of the Press Secretary

FOR IMMEDIATE RELEASE

May 20, 2009

REFORMS FOR AMERICAN HOMEOWNERS AND CONSUMERS

President Obama Signs the Helping Families Save Their Homes Act and the Fraud Enforcement and Recovery Act

WASHINGTON – Today, President Obama will sign the Helping Families Save Their Homes Act and the Fraud Enforcement and Recovery Act into law.

"These landmark pieces of legislation will protect hardworking Americans, crack down on those who seek to take advantage of them, and ensure that the problems that led us into this crisis never happen again," said President Obama.

The Helping Families Save Their Homes Act is an important step towards stabilizing and reforming our nation's financial and housing markets – helping American homeowners and increasing the flow of credit during these difficult economic times. This legislation will strengthen our nation's housing sector and facilitate the goals of the Administration's Making Home Affordable Program by helping millions of American homeowners stay in their homes.

The Fraud Enforcement and Recovery Act will protect the American people by giving the federal government new tools and resources to prevent fraud. This reform bill will help the federal government keep markets free and fair, so that American consumers can thrive.

Fact sheets on both pieces of legislation are below.

The Helping Families Save Their Homes Act

Expanding Reach of Making Home Affordable to Help More Homeowners

The deep contraction in the economy and in the housing market has created devastating consequences for homeowners and communities throughout the country. Since January, the Administration has made significant progress in developing and implementing a comprehensive plan for stabilizing our housing market, the centerpiece of which is the Making Home Affordable Program (MHA). By reducing foreclosures around the country, the average homeowner could see their house price bolstered by as much as \$6,000 as a result of this plan, and as many as 9 million homeowners may increase the affordability of their mortgages and avoid preventable foreclosures.

Our progress in implementing MHA to date has been substantial. We have introduced detailed guidelines for loan modifications which will establish a new standard practice for affordable modifications in the industry. Servicers covering more than 75 percent of loans in the country have now begun modifications and refinancings under the Administration's MHA Program. We have also launched MakingHomeAffordable.gov, a consumer website for the program, which has had more than 17 million page views in less than 2 months, announced details of our Second Lien Program, Home Price Decline Protection Incentives and Foreclosure Alternatives Program, strengthened Hope for Homeowners as a part of the MHA program, and expanded the efforts of the federal government to combat mortgage rescue fraud.

- Improvements to Hope for Homeowners The legislative improvements to Hope for Homeowners included in S.896 should significantly improve the ability of borrowers to benefit from the opportunities provided by Hope for Homeowners in the context of the Administration's housing plan. On April 28th we announced new details describing how Hope for Homeowners will be strengthened as a part of the Administration's Making Home Affordable Program. Incentive payments will be available for successful Hope for Homeowners refinances and servicers will be required to evaluate all applicants for eligibility for Hope for Homeowners as well as the Home Affordable Modification Program.

Hope for Homeowners targets help to underwater borrowers, who often face heightened risks of foreclosure, by requiring principal writedowns to help homeowners increase the equity they own in their homes. The legislative modifications to the Hope for Homeowners program included in S.896 will ease restrictions on eligibility and enable refinancing of underwater mortgages for a greater number of borrowers.

- Modifications to FHA and federally guaranteed farm loans Legislative changes to FHA and federally guaranteed farm loans will facilitate cost-neutral loan modifications for federally guaranteed rural housing loans and FHA loans. These changes will improve the Administration's ability to provide assistance to responsible borrowers with federally guaranteed rural housing loans and FHA loans as part of the Making Home Affordable Program.

Increasing Flow of Credit by Expanding FDIC and NCUA Capabilities

The Helping Families Save Their Homes Act of 2009 contains provisions that will help to restore and support the flow of credit in the US economy. The act authorizes new important tools to assist in stabilizing the financial system during the current economic downturn. Together these provisions, described below, should provide additional support for increasing the flow of credit in the US economy.

- Extension of temporary increase in deposit insurance Extending the temporary increase in deposit insurance will provide added confidence to depositors. This will provide depository institutions with a more stable source of funding and enhanced ability to continue making credit available across our economy.
- Increase in borrowing authority of the FDIC
Increasing the borrowing authority for the Federal Deposit Insurance Corporation (FDIC) to \$100 billion will allow the FDIC to spread out premium increases over time. This will reduce near-term costs for banks and thrifts, which will enhance their ability to continue making credit available. As a further tool to protect the financial system, the legislation also includes a process to allow the FDIC to borrow additional amounts through December 31, 2010.
- Increase in NCUA borrowing authority and creation of a stabilization fund The legislation will increase the borrowing authority for the National Credit Union Administration (NCUA) to \$6 billion and create a Stabilization Fund to address problems in the corporate credit union sector. This will reduce near-term costs for credit unions, which will enhance their ability to continue making credit available. As a further tool to protect the financial system, the legislation also includes a process to allow the NCUA to borrow additional amounts through December 31, 2010.

Increasing Consumer Protections Related to Housing

- Establishes protections for renters living in foreclosed homes One of the often overlooked problems in the foreclosure crisis has been the eviction of renters in good standing, through no fault of their own, from properties in foreclosure. To address the problem of these tenants being forced out of their homes with little or no notice, this legislation will require that in the event of foreclosure, existing leases for renters are honored, except in the case of month-to-month leases or owner occupants foreclosing in which cases a minimum of 90 days notice will be required. Parallel protections are put in place for Section 8 tenants.

- Establishes right of a homeowner to know who owns their mortgage
Often mortgage loans are sold and transferred a number of times. Borrowers often have difficulty determining who owns their loan, and who to contact with questions, problems or complaints about their loan. This legislation requires that borrowers be informed whenever their loan is sold or transferred, so that they will always know who owns their loan.

Provides Comprehensive New Resources for Homeless Americans

This legislation significantly increases aid to homeless Americans, appropriating \$2.2 billion dollars to help solve the crisis of homelessness, and address the enormous costs homelessness can impose on individuals, families, neighborhoods and communities. In addition, the legislation consolidates homelessness programs to improve effectiveness and streamline administration, and targets assistance to families with children – the fastest growing segment of the homeless population.

The Fraud Enforcement and Recovery Act

Strengthening the Capacity to Fight, Prevent, and Deter Fraud

The legislation strengthens the capacity of federal prosecutors and regulators to hold accountable those who have committed fraud. The amendments expand the Department of Justice's authority to prosecute crimes involving mortgage fraud, commodities fraud, and fraud involving U.S. government assistance provided during the recent economic crisis.

- Covering private mortgage brokers and other companies Over 50% of sub-prime mortgages issued as recently as 2005 involved private mortgage institutions and similar entities not currently covered under federal bank fraud criminal statutes. FERA amends the definition of a "financial institution" in the criminal code (18 U.S.C. § 20). This will extend Federal laws to private mortgage brokers and companies that are not directly regulated or insured by the Federal Government.
 - This law will expand the Department of Justice's authority to prosecute mortgage fraud involving private mortgage institutions under a variety of statutes, including 18 U.S.C. § 215 (financial institution bribery); 18 U.S.C. § 225 (continuing financial crimes enterprise); 18 U.S.C. § 1005 (false statement/entry/record for financial institution); and 18 U.S.C. § 1344 (bank/financial institution fraud).
 - The bill changes the definition of "financial institution" to include private mortgage brokers and other non-bank lenders will enhance our ability to prosecute criminals under the bank fraud statute who commit fraud involving loans from those companies.
- Prohibiting manipulation of the mortgage lending business
The new law changes the mortgage applications statute (18 U.S.C. § 1014) to make it a crime to make a materially false statement or to willfully overvalue a property in order to influence any action by a mortgage lending business. Currently, the offense only applies to federally-regulated institutions.
- Protecting the Integrity of TARP and the Recovery Act
The legislation amends the major fraud statute (18 U.S.C. § 1031) to protect funds expended under TARP and the Recovery Act.
- Covering commodity futures and options in anti-fraud statutes
This law amends the Federal securities statute (18 U.S.C. § 1348) to cover fraud schemes involving commodity futures and options. Currently, the statute does not reach frauds involving options or futures, which include some of the derivatives and other financial products that were part of the financial collapse.
- Broadening the False Claims Act
FERA modifies the False Claims Act (FCA) to eliminate the requirement that a false claim be presented to a federal official, or that it directly involve federal funds. It

also amends the FCA reverse false claims provision to ensure that the knowing retention of an overpayment is a violation.

Providing the Resources to Keep Markets Free and Fair

There is no shortcut to effective fraud enforcement and prevention. FERA will also provide needed resources to help the Department investigate and prosecute those who engage in fraudulent schemes.

- Investing in fraud prevention and enforcement
The legislation authorizes up to \$165 million in new resources for FY 2010 and 2011 to hire fraud prosecutors and investigators.
- Strengthening the federal government's full regulatory and enforcement capacity
The legislation authorizes \$140 million for the FBI, \$50 million for U.S. Attorney's Offices; \$20 million for the Criminal Division, \$15 million for the Civil Division, \$5 million for the Tax Division, \$30 million for the US Postal Inspection Service, \$30 million for the Inspector General at the Department of Housing and Urban Development, \$20 million for the Secret Service, and \$21 million for the Securities and Exchange Commission.

Addressing the Causes and Consequences of the Crisis

This legislation creates a bipartisan Financial Crisis Inquiry Commission to investigate the financial practices that brought us to this point, so that we make sure it never happens again.

S.896

**To prevent mortgage foreclosures and enhance mortgage credit availability.
(Enrolled as Agreed to or Passed by Both House and Senate)**

TITLE VII--PROTECTING TENANTS AT FORECLOSURE ACT

SEC. 701. SHORT TITLE.

This title may be cited as the 'Protecting Tenants at Foreclosure Act of 2009'.

SEC. 702. EFFECT OF FORECLOSURE ON PREEXISTING TENANCY.

(a) In General- In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to--

- (1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and
- (2) the rights of any bona fide tenant, as of the date of such notice of foreclosure--

(A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1),

except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

(b) Bona Fide Lease or Tenancy- For purposes of this section, a lease or tenancy shall be considered bona fide only if--

- (1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;
- (2) the lease or tenancy was the result of an arms-length transaction; and
- (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy.

(c) Definition- For purposes of this section, the term 'federally-related mortgage loan' has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602).

SEC. 703. EFFECT OF FORECLOSURE ON SECTION 8 TENANCIES.

Section 8(o)(7) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(7)) is amended--

(1) by inserting before the semicolon in subparagraph (C) the following: `and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner--

`(i) will occupy the unit as a primary residence; and

`(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.'; and

(2) by inserting at the end of subparagraph (F) the following: `In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602)) or on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph (C) shall not affect any State or local law that provides longer time periods or other additional protections for tenants.'.

SEC. 704. SUNSET.

This title, and any amendments made by this title are repealed, and the requirements under this title shall terminate, on December 31, 2012.

Appendix: SAMPLE WRITTEN APPLICATION SCREENING PROCESS & CRITERIA

We are working with neighbors and other landlords in this area to maintain the quality of the neighborhood. We want to make sure that people do not use rental units for illegal activity. To that end, we have a thorough screening process.

If you meet the application criteria and are accepted, you will have the peace of mind of knowing that other renters in this area [or apartment community] are being screened with equal care, and as a result, there may be a reduced risk of illegal activity occurring in the area.

Please review our list of criteria. If you feel you meet the criteria, please apply. Please note that we provide equal housing opportunity. We do not discriminate on the basis of race, color, religion, sex, handicap, national origin, or familial status.

Application Criteria:

☐ **A complete application.** *One for each adult (18 years of age or older). If a line isn't filled in, or the omission explained satisfactorily, your application is incomplete and we will return it to you.*

☐ **Rental history verifiable from unbiased sources.** *If you are related by blood or marriage to one of the previous landlords listed, or your rental history does not include at least two previous landlords, we will require: a qualified co-signer on your rental agreement (qualified co-signers must meet all applicant screening criteria) or an additional security deposit of X amount. It is your responsibility to provide us with the information necessary to contact your past landlords. We reserve the right to deny your application if, after making a good faith effort, we are unable to verify your rental history. If you owned - rather than rented - your previous home, you will need to furnish mortgage company references and proof of title ownership or transfer.*

☐ **Sufficient income/resources.** *If the combination of your monthly personal debt, utility costs, and rent payments will exceed X% of your monthly income, before taxes, we will require a qualified co-signer on your rental agreement (or an additional deposit of \$X amount). If the combination exceeds X+Y% of your monthly income, your application will be denied. We must be able to verify independently the amount and stability of your income. Sources the applicant can use to verify income are pay stubs, employer/source contact, or tax records. If self-employed, the applicant may provide business license, tax records, bank records, or a list of client references. For Housing Choice Voucher applicants, the amount of assistance will be considered part of your monthly income for purposes of figuring the proportion of rent.*

☐ **Two pieces of ID must be shown.** *We require a photo ID (a driver's license or other government issued photo identification card) and a second piece of ID as well. Present both forms of ID with completed application.*

☐ **Housing Choice Voucher information access.** *Housing Choice Voucher applicants must sign a consent form allowing the Durham Housing Authority (or your local Public Housing agency) to verify information from your file regarding your rental history.*

☐ **False information is grounds for denial.** *As specified in the lease/rental agreement, you will be denied rental if you misrepresent any information on the application. If misrepresentations are found after a rental agreement is signed, your rental agreement will be terminated.*

☐ **Criminal convictions for certain types of crimes will result in denial of your application.** *You will be denied rental if, in the last X years, you have had a conviction for any type of crime listed on the application (or document where this information appears).*

Conviction for City of Durham Noise Ordinance violations will result in denial of your application. *You will be denied rental if, in the last X years, you have had Y conviction for noise and party ordinance violation under Durham City Code.*

☐ **Certain court judgments against you may result in denial of your application.** *If, in the last X years, you have been through a court ordered eviction, or had any judgment against you for financial delinquency, your application will be denied. This restriction may be waived if there is no more than one instance, the circumstances can be justified, and you provide a qualified co-signer on your rental agreement.*

☐ **Poor credit record (overdue accounts) may result in denial of your application.** *Occasional credit records showing payments within X to Y days past due will be acceptable, provided you can justify the circumstances. Records showing payments past Z days are not acceptable.*

☐ **Poor references from previous landlords may result in denial of your application.** *You will be turned down if previous landlords report significant complaint levels of noncompliance activity such as: repeated disturbance of the neighbors' peace; reports of prostitution, drug dealing, or drug manufacturing; damage to the property beyond normal wear; reports of violence or threats to landlords or neighbors; allowing persons not on the lease to reside on the premises; failure to give proper notice when vacating the property. Also, you will be turned down if a previous landlord would be disinclined to rent to you again for violations of the lease by you or others allowed on the property during your tenancy.*

☐ **There is a \$X non-refundable application fee.** *In order to properly process your application, we require a non-refundable application fee.*

☐ **We will accept the first qualified applicant.**

☐ **We will require up to X business days to process an application.**

If you are accepted, you will be required to sign a rental agreement in which you will agree to abide by the rules of the rental home or community. A complete copy of our rental agreement is available for anyone who would like to review it.

In particular, in addition to other important requirements, please note that your rental agreement will:

☐ *Require that you prevent all household members, guests, and visitors from engaging in any lease violating behavior.*

☐ *Forbid you and any member of your household, or your guests, from engaging in illegal drug use, sale, manufacture, distribution, or other criminal activity on or near the property.*

☐ *Limit your ability to allow guests to stay for X days in a Y -day period without the advance permission of the landlord.*

☐ *Provide that serious or repeated minor violations of the lease requirements on these items, or any other item addressed by the rental agreement, will result in termination of your right to possession of the premises.*

Please read the entire rental agreement carefully, as we take each part of the agreement seriously. The agreement has been written to help us prevent illegal activity from disturbing the peace of our rental units and to help make sure that our residents are given the best housing we can provide.

Appendix: TWELVE WAYS TO IMPROVE YOUR NEIGHBORHOOD RIGHT NOW!

The following list is intended to introduce the neighbor who has never participated in a crime prevention effort to simple steps that can be taken now to make a difference.

1. **Report crime promptly.** Neighbors sometimes don't report criminal activity because they don't want to bother the police, they assume police are too short-staffed to respond, or they believe that there isn't much an officer can (or will) do about a given problem anyway. Whether the issue is graffiti, petty vandalism, or something much more serious, police cannot act without first hearing about the problem from you. Calling won't guarantee that police can fix the problem, but failing to call can guarantee that they won't. Also, don't assume someone else has called. Make the call yourself.
2. **Report nuisances and other non-criminal problems promptly.** Examples: Junked cars on front lawns, abandoned autos in the streets, old mattresses left to rot in a backyard, garbage dumped illegally in a vacant lot. When you find yourself thinking, "someone ought to *do* something," *do something*. Rental property residents are strongly encouraged to report problems in a timely manner (preferably in writing) to the landlord first so that the landlord has an opportunity to resolve the problem. Neighbors are also encouraged to call the landlord first with their complaint. If the landlord is not responsive, then residents and neighbors are encouraged to contact the City of Durham Neighborhood Improvements Services at (919) 560-1647, Durham City/County Zoning Department (919) 560-4137 Durham One Call (919) 560-1200 or the Durham Housing Authority with their complaint. If the problem is not resolved to your satisfaction, then call your neighbors and ask those who are also concerned about the issue to call and report as well. Then keep calling until the issue is resolved.
3. **Take away the opportunity for crime.** Think about your home, your car, and even your lifestyle and ask what you could change to take away the opportunity for crime. Lock your car and never leave valuables, even for a few minutes, in the car where would-be thieves might see them. Trim bushes or trees on your property that offer too-convenient hiding places. Also trim where trees and bushes block a clear view of your front door and address from the street or make it difficult for a person to see out of windows in your home. In short, make your front porch visible and make sure your home looks like it has its "eyes" (windows) open.
4. **Meet the youth who live on your block and greet them by name.** This is one of the simplest steps an adult can take, yet it can make a profound difference should there be a future need for adults and young people to speak to each other in the midst of a neighborhood crisis. Also, it is difficult to help form a safe and supportive community for children without the adults and children knowing each other. Even those without children should know to whom the various children in the neighborhood belong. In

this way, each adult is better able to help in an emergency and is better prepared to discuss problems immediately as they arise.

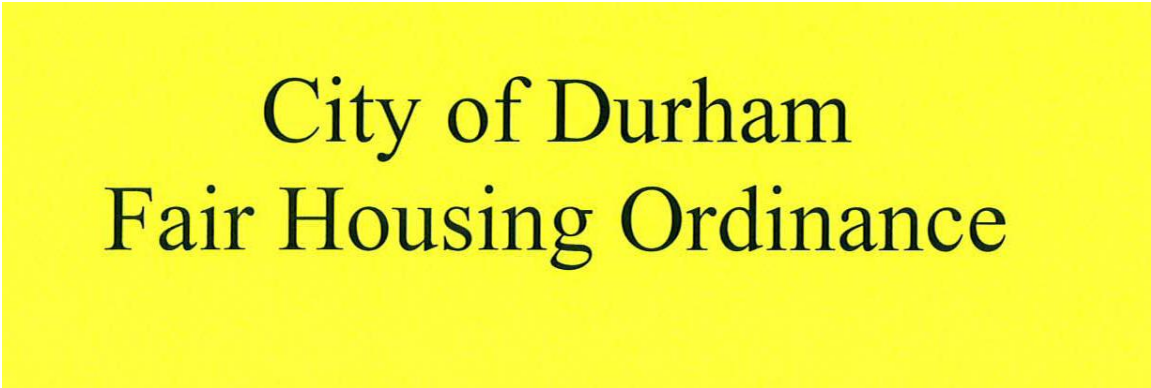
5. **Make a list of the names and phone numbers of every neighbor on your block.** Not just two neighbors - set a goal of at least 10 and preferably 20 or 30. Find almost any citizen who has turned around a problem block and you will find a citizen who really knows the people who live there. Did you grow up in a neighborhood where “everyone knew each other” and find that today your neighborhood isn’t like that? That’s true for many people. That’s not “society’s” fault. Instead, think of it as your own fault, and you can fix it. Unless you know neighbors’ names and numbers, you can’t call them about a concern or let them know about a neighborhood problem. Learn the names and phone numbers of your neighbors this weekend.
6. **Make a list of landlords in your area as well.** As owners of property in the community, landlords are responsible to the neighborhood and most are rightly concerned about the health of the community in which their properties stand. You can find out the name and address of the person or organization that owns any property, including the rental house next door, by contacting your county tax assessor’s office. Do it today.
7. **Turn your porch light on.** Do this every night at dusk and keep it on till dawn. Crime tends to decline in neighborhoods that are well lit. Turning on porch lights is a simple way to start this process. It also makes the street feel more “welcome” to good residents who are out for a walk in the evening. It communicates a higher level of caring for the neighborhood by residents. This can become a daily routine or it can be accomplished by installing a timer. It is also immediate - while you wait for local government to install that new street light that everyone is asking for, go ahead and add a little more light yourself. Then encourage other neighbors to do the same.
8. **Walk around the block.** It sounds simple enough, but neighbors benefit over time when more responsible citizens walk about more, particularly for those who are comfortable doing it, at night, every night around their block. At minimum walk around the block, once every day, preferably at night *if* you feel comfortable doing so. Take a moment to chat with neighbors, including youth, when the opportunity arises.
9. **Drive slowly on neighborhood streets.** While we often call for stop signs, lights, and speed bumps, we often forget that we can organize a means to slow down neighborhood traffic sooner. Remember that it is legal to drive a few miles per hour *below* the speed limit in your neighborhood. For example, if the speed limit is 25, try 20 instead – think of yourself as a “pace car driver” where you set a slow pace through your neighborhood. Regular, slower driving on neighborhood side streets by multiple neighbors will dampen the desire of racers to use your street - it isn’t as fun to cut through a neighborhood if the likelihood of being stuck behind a car traveling at a more

respectful pace has increased. Also, do it on every side street in the neighborhood, not just the one near your home.

10. **Pick up the litter near your home, even if you didn't put it there.** Most people are less likely to litter where they don't see litter already. You can help stop the growth of trash in your neighborhood by taking away the existing litter that attracts it.
11. **Stay where you are.** Stable neighborhoods are built on the commitment of long term residents who would rather live in a healthy community than move to a bigger house. Communities reach stability when conscientious citizens allow their roots to grow deep and help transform a geographic area that exists as a "neighborhood" in name only into a real community of involved people. Please, stay and help.
12. **Help your neighborhood association or similar groups.** If you are willing, decide what greater contribution you would like to make – then take the lead and do it. If leadership isn't your desire, at least make sure someone in your household attends local neighborhood association meetings. You'll be kept better informed of the issues facing the neighborhood and how you can help and, perhaps more importantly, you'll have the chance to shape, guide, and participate in the future of your neighborhood.
13. **Finally, don't stop at 12 tasks:** Do whatever else you can to make your neighborhood a safe and enjoyable place to live, work, go to school, and raise a family. Remember: living in a good neighborhood isn't a right; it's a responsibility.

*Adapted with permission from material by Campbell DeLong Resources, Inc.,
www.cdri.com.*

Appendix: City of Durham Fair Housing Ordinance



City of Durham Fair Housing Ordinance

ORDINANCE #10435

AN ORDINANCE ADOPTING A RE-WRITTEN CHAPTER 8.5 OF THE
DURHAM CITY CODE, "FAIR HOUSING ORDINANCE OF THE CITY OF DURHAM,"
AND REPEALING ORDINANCES #6381, #7360, #9442 AND #9660"

BE IT HEREBY ORDAINED BY THE DURHAM CITY COUNCIL:

Section 1. That Ordinance #6381, "Fair Housing Ordinance of the City of Durham," of the Durham City Code is hereby repealed.

Section 2. That Ordinance #7360, "Fair Housing Ordinance of the City of Durham," of the Durham City Code is hereby repealed.

Section 3. That Ordinance #9442, "An Ordinance To Amend The Durham City Code, Chapter 8.5, Fair Housing Ordinance By Adding 'Familial Status,'" of the Durham City Code is hereby repealed.

Section 4. That Ordinance #9660, "Fair Housing Ordinance of the City of Durham," of the Durham City Code is hereby repealed.

Section 5. That Chapter 8.5 of the Durham City Code is hereby rewritten to provide as follows:

"Fair Housing Ordinance Of The City Of Durham"

Article I. IN GENERAL.

Sec. 8.5-1. - Title.

This Article shall be known and may be cited as the "Fair Housing Ordinance of the City of Durham."

Sec. 8.5-2. - Purposes.

A. The general purpose of this chapter is to provide individuals within the City of Durham freedom from discrimination in connection with real estate transactions because of race, color, religion, national origin, sex, handicap, or familial status; to promote harmony in human relations; to prevent commercial advantage from unethical practices; and to effectuate within the City of Durham the policies embodied in Title VIII of the Federal Civil Rights Act of 1968, as amended, and the Federal Fair Housing Amendment Act of 1988 et. seq.

B. This chapter shall be construed according to the fair import of its terms.

Sec. 8.5-3. - Definitions.

For the purposes of this chapter:

- A. "Aggrieved Person" means any person who:
- 1) claims to have been injured by a discriminatory housing practice; or
 - 2) believes that he will be injured by a discriminatory housing practice that is about to occur.
- B. "Commission" means the Durham Human Relations Commission as established by the City Council of the City of Durham by ordinance dated October 7, 1968.
- C. "Complaint" means a written complaint which has been filed with the Commission in accordance with the provisions of this chapter, alleging one or more discriminating practices.
- D. "Complainant" means the person or group of persons who files a complaint with the Commission in accordance with the provisions of this chapter.
- E. "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Commission.
- F. "Conciliation Agreement" means a written agreement setting forth the resolution of the issues in conciliation.
- G. "Covered Multifamily Dwellings" means:
- 1) A building, including all units and common use areas, in which there are four (4) or more units if the building has one or more elevators; or
 - 2) Ground floor units and ground floor common use areas in a building with four (4) or more units.
- H. "Director" means the Director of the Durham Human Relations Commission.
- I. "Discriminatory Practice" means an act that is unlawful under this chapter.
- J. "Dormitory Property" shall include housing accommodations owned or operated by a bona fide private, state-owned, or state-supported educational institution for the purpose of housing its students. "Dormitory Property" shall also include housing accommodations owned or operated by a bona fide hospital, nursing home, correctional institution, or similar facility in connection with its purpose of providing for the care or custody of the residents thereof. "Dormitory Property" shall also include other housing accommodations operated and occupied in the style of a dormitory, as that term is commonly understood, taking into account such characteristics as required common usage of kitchen facilities, bathroom facilities and/or sleeping quarters.
- K. "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed

or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

L. "Familial Status" means one or more individuals (who has not attained the age of 18 years) being domiciled with:

- 1) a parent or another person having legal custody of such individual or individuals; or
- 2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

M. "Family" includes a single individual.

N. "Financial Institution" means any banking corporation or trust company, savings and loan association, credit union, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

O. "Gender" means words importing the masculine gender shall include the feminine neuter.

P. "Handicap" with respect to a person shall mean:

- 1) having a physical or mental impairment which substantially limits one or more of a person's major life activities; or
- 2) having a record of such impairment; or
- 3) being regarded as having such an impairment.

Q. "Hearing Board" means the panel or person constituted in accordance with this chapter to hear and adjudicate fair housing complaints.

R. "Housing Accommodation" includes any improved or unimproved real property or part thereof which is used or occupied, or is intended, arranged or designed to be used or occupied, as the home or residence of one or more individuals.

S. "Person" includes one or more individuals, political subdivisions of the State and instrumentalities thereof, including the City or any governmental entity or agency thereof, partnerships, associations, corporations, labor organizations, legal representatives, mutual companies,

joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receipts, or any other legal or commercial entity.

T. "Qualifying Resident" or "Senior Citizen" shall mean a person 62 years of age or older, or 55 years of age or older in a senior citizen housing community.

U. "Real Estate Broker or Agent" includes any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, conciliations or contracts and the administration of matters regarding such offers solicitations or contracts or any residential real estate-related transactions.

V. "Real Estate Transaction" includes the sale, exchange, rental, or lease of real property, or of an interest therein.

W. "Real Property" includes buildings structures, real estate, lands, leaseholds, cooperatives, condominiums, and hereditament, corporeal and incorporeal, or any interest therein.

X. "Respondent" means a person who is alleged to have committed a discriminatory practice and against whom a complaint has been filed pursuant to this chapter.

Y. "To Rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

Sec. 8.5-4. - Severability.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or application of the chapter which can be given effect without the invalid provision or application; and to this end, the provisions of this chapter are severable.

Sec.5-5. - 8.5-10. Reserved.

ARTICLE II. PROHIBITED ACTS.

Sec. 8.5-11. - Discriminatory Practices Unlawful.

It is unlawful to commit or to attempt to commit directly or indirectly a discriminatory practice as defined in this chapter.

Sec. 8.5-12. - Discrimination In Real Estate Transactions.

(a) It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or agent, or for any other person, because of race, color,

religion, national origin, sex, handicap or familial status to:

1. Refuse to engage in a real estate transaction with a person after the making of a bona fide offer;
2. Discriminate against a person in the terms, conditions or privileges of a real estate transaction or in the provision of services or facilities in connection therewith;
3. Refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;
4. Refuse to negotiate for a real estate transaction with a person, or otherwise make unavailable or deny a dwelling to any person;
5. Represent to a person that real property is not available for inspection, sale, rental or lease, when in fact it is so available; or to fail to bring a property listing to a person's attention, or to refuse to permit a person to inspect real property;
6. Make, print, circulate, post, mail, or cause to be made, printed or published, a statement, advertisement or sign, or to use a form of application for a real estate transaction or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or difference with respect to race, color, religion, national origin, sex, handicap or familial status;
7. For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding entry or prospective entry into the neighborhood of a person of a particular race, color, religion, sex, handicap, familial status or national origin;
8. Offer, solicit, accept, use or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the provisions of facilities or services in connection therewith;
9. Discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of handicap of:
 - a. that buyer or renter, or
 - b. a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - c. any person associated with that buyer or enter.

10. Discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of:
 - a. that person; or
 - b. a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - c. any person associated with that person.
- (b) For purposes of subsection (a) (9) and (10), discrimination includes:
 1. A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modification may be necessary to afford such person full enjoyment of the premises, except that, in the case of rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.
 2. A refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
 3. The failure to design and construct those covered multifamily dwellings available for first occupancy after March 13, 1991, in such a manner that:
 - a. The dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual site characteristics; or
 - b. With respect to dwellings with a building entrance on an accessible route:
 1. The public use and common use portions of such dwelling are readily accessible to and usable by handicapped persons;
 2. All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
 3. All premises within such dwellings contain the following features of adaptive design:

- a. An accessible route into and through the dwelling;
- b. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
- c. Reinforcements in the bathroom wall to allow later installation of grab bars; and
- d. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

Compliance with the appropriate requirements of the American National Standard for Buildings and Facilities Providing Accessibility and Usability for Physically Handicapped People (commonly cited as "ANSI A117.1-1986") suffices to satisfy the requirements of subsection (b) (3) (c).

Sec. 8.5-13. - Exemptions.

The provisions of Section 8.5-12 (other than subsection 6) do not apply to:

(A) Any single-family house sold or rented by an owner, provided, that such private individual owner does not own more than three (3) such single-family houses at any one time, provided further, that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall only apply with respect to one such sale within any twenty-four (24) month period, provided further, that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three (3) such single-family houses at one time, provided further, that the sale or rental of any such single-family house shall be exempted from the application of this chapter only if such house is sold or rented (i) without the use, in any manner, of the sales or rental facilities or the sales or rental services of any real estate broker or agent, or of such facilities or services of any person in the business of selling or renting housing accommodations, or of any employee or agent of any such broker, agent, or person and (ii) without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of section 8.5-12(6) of this chapter.

1. Nothing in subsection (A) of this section shall prohibit the use of attorneys, escrow agents, abstractors, title companies, or other such professional assistance as necessary to perfect or transfer the title.

2. For the purposes of subsection (A) of this section, a person shall be deemed to be in the business of selling or renting housing accommodations if:

- (a) he has, within the preceding twelve (12) months, participated as principal in three (3) or more transactions involving the sale or rental of any housing accommodations or interest therein, or
 - (b) he has, within the preceding twelve (12) months, participated as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or sales or rental services in two (2) or more transactions involving the sale or rental of any housing accommodation or interest therein, or
 - (c) he is the owner of any housing accommodation designed or intended for occupancy by, or occupied by, five (5) or more families.
- (B) Rooms or units in housing accommodations containing living quarters occupied or intended to be occupied by no more than three (3) families living independently of each other, if the owner actually maintains and occupies one (1) of such living quarters as his residence.
- (C) With respect to discrimination based on sex, the rental or leasing of housing accommodations in a single-sex dormitory property;
- (D) To private clubs, not in fact open to the public, which incident to their primary purpose or purposes, provide lodging, which they own or operate for other than a commercial purpose, to their members or give preference to their members;
- (E) To the sale, rental, exchange, or lease of commercial real estate. For purposes of this chapter, commercial real estate means real property which is not intended for residential use.
- (F) Nothing in this chapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of a dwelling which it owns for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted because of race, color, national origin, sex, handicap, or familial status.
- (G) No provision of this chapter regarding familial status applies with respect to housing for older persons. 'Housing for older persons' means housing:
1. Provided under any federal or state program that the secretary of the Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program.
 2. Intended for and solely occupied by person 62 years of age or older.

3. Intended for and operated for occupancy by at least one person 55 years of age or older per unit as shown by the following factors:

- (a) the existence of significant facilities and services specifically designed to meet the physical and social needs of older persons or, if this is not practicable, that such housing is necessary to provide important housing opportunities for older persons;
- (b) that at least eighty percent (80%) of the units are occupied by at least one person 55 years of age or older per unit; and
- (c) the publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years or older.

4. Housing shall not fail to meet the requirements for housing for older persons by reason of:

- (a) Persons residing in such housing as of September 13, 1988 who do not meet the requirements of subsections G(2) and (3) above; provided, that new occupants of such housing meet the age requirements of G(2) and (3).
- (b) Unoccupied units, provided that such units are reserved for occupancy by persons who meet the age requirements of subsections G(2) and (3) above.

5. Housing facilities newly constructed for first occupancy after March 12, 1989 shall satisfy the requirements of subsection G(3) above if when twenty-five percent (25%) of the units are occupied, eighty percent (80%) of the occupied units are occupied by at least one (1) person fifty-five (55) years or older.

6. Housing facilities shall also satisfy the requirements of subsection G(3) above if, on September 13, 1988, under eighty percent (80%) of the occupied units are occupied by at least one (1) person fifty-five (55) years or older per unit, provided that at least eighty percent (80%) of the units that are occupied by new occupants after September 13, 1988 are occupied by at least one (1) person fifty-five (55) years or older.

Sec. 8.5-14. - Discrimination in Financial Practices.

It is unlawful discriminatory housing practice for any person or other entity whose business includes engaging in residential real estate related transactions to discriminate against any person in making available such a transaction, or in the terms and conditions of such a transaction, because of race, color, religion, sex, national origin, handicap, or familial status. As used in this subsection, 'residential real estate related transaction' means:

A. The making or purchasing of loans or providing financial assistance (i) for purchasing, constructing, improving, repairing, or maintaining a dwelling, or (ii) where the security is residential real estate; or

B. The selling, brokering, or appraising of residential real estate.

The provisions of this subsection shall not prohibit any financial institution from using a loan application which inquires into a person's financial and dependent obligations or from basing its actions on the income or financial abilities of any person.

Sec. 8.5-15. - Discrimination in the Provisions of Brokerage Service.

It is a discriminatory practice to deny any person access to membership or participation in any real estate brokers' organization, multiple listing service, or other service, organization, or facility relating to the business of engaging in real estate transactions, or to discriminate against a person in the terms or conditions of such access, membership, or participation because of race, color, religion, national origin, sex, handicap, or familial status.

Sec. 8.5-16. - Other Unlawful Practices.

A. It is unlawful practice for any person to alter, destroy, or conceal any document or object or any other evidence in anticipation of or during the investigation or hearing of a fair housing complaint or to fail to make available to the Commission or its duly authorized representatives any evidence subpoenaed or otherwise lawfully demanded with regard to such complaint, or to procure the absence of a witness subpoenaed by the Commission.

B. Restrictive Covenants and Conditions.

1. Every provision in an oral agreement or written instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, occupancy or lease thereof to individuals of a specified race, color, religion, national origin, sex, handicap, or familial status is a discriminatory practice and is void.

2. Every condition, restriction, or prohibition, including a right to entry or possibility of reverter, which directly or indirectly limits the use or occupancy of real property on the basis of race, color, religion, national origin, sex, handicap, or familial status is a discriminatory practice and is void except as permitted by the exemption of 8.5-13(D) of this chapter.

C. It is an unlawful practice for a person, as a party to a conciliation agreement made under this chapter, to violate the terms of the agreement.

D. It shall be unlawful to:

1. Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of or on account of his having exercised or enjoyed his rights under this chapter or on account of his having aided or encouraged any other person in the exercise or enjoyment of his or her rights under this chapter.

2. Aid, abet, incite, compel or coerce a person to engage in any of the acts or practices declared unlawful by this chapter.

3. Obstruct or prevent a person from complying with the provisions of this chapter or any order issued thereunder.

4. Resist, prevent, impede, or interfere with the Commission or any of its members or employees in the lawful performance of a duty under this chapter.

Sec. 8.5-17. - Acting for Another Person No Defense.

It shall be no defense to a violation of this chapter by a person that the violation was requested, sought or otherwise procured by another person.

Sec 8.5-18. - Right of Handicapped Citizens To Housing.

A. Each handicapped citizen shall have the same right as any other citizen to live and reside in residential communities, homes or group homes, and no person or group of persons, including governmental bodies, shall be permitted, or have the authority, to prevent any handicapped citizen, on the basis of his handicap, from living and residing in residential communities, homes, and group homes on the same basis and conditions as any other citizen. Nothing herein shall be construed to conflict with the provisions of Chapter 122-C of the General Statutes of the State of North Carolina.

B. A visually handicapped person who has or obtains a guide dog shall be accorded the same rights under this chapter as are accorded in the provisions of Section 168-4.2 of Chapter 168 of the General Statutes of the State of North Carolina.

C. A hearing impaired person who has or obtains a hearing-ear dog especially trained for the purpose and designated as such by the North Carolina Council for the Hearing Impaired shall be accorded the same rights under this chapter as are accorded in the provisions of Section 168-4.2 of Chapter 168 of the General Statutes of the State of North Carolina.

Secs. 8.5-19. - 8.5-24 Reserved.

ARTICLE III. ENFORCEMENT.

Sec. 8.5-25. - Powers of the Commission.

The Commission shall, in addition to the powers set forth in this chapter, have the power:

1. To receive, initiate, investigate, seek to conciliate, to arbitrate and conduct hearings on complaints filed under this article; to make recommendations to parties named in such complaints; and to approve or disapprove plans to eliminate or reduce the effects of discriminatory practices and monitor compliance with such plans;
2. To require entry upon land and premises in the possession of a party to a complaint alleging a violation of the Ordinance; to require answers to interrogatories and the production of documents and other tangible things for the purpose of inspection, copying, or translating; to administer oaths and examine witnesses under oath or affirmation and to compel the attendance of witnesses at hearings, depositions and other examinations by members of the Commission or its agents, and the production of documents and other tangible things. Witnesses whose depositions are taken or who are summoned before the Commission or its agents shall be entitled to the same witness and mileage fees as are paid to witnesses in the courts of this state.
3. To apply to the Durham County Superior Court upon the failure of any person to respond to or comply with a lawful interrogatory, subpoena or request for the production of relevant evidence or possible sources of evidence, for an order requiring such person to respond to or comply with the interrogatory, subpoena or request for the production of relevant evidence or possible sources of evidence. The court shall have jurisdiction to issue such order after notice to all proper parties. On petition of the person to whom the subpoena is directed, the court may vacate or modify the subpoena.
4. To petition the court for any appropriate relief, if the Commission determines following a hearing as provided for in Section 8.5-29 that there is reasonable cause to believe that a violation of this chapter has occurred, and if efforts at conciliation have not been concluded to the satisfaction of the Commission, or if the terms of any conciliation agreement negotiated by the Commission, or binding arbitration entered into by the parties, under the provisions of this Chapter, are not being complied with by the respondent(s).
5. To adopt, promulgate, amend and rescind such rules and regulations to effectuate the purposes and policies of this chapter and the policies and practices of the Commission, in connection therewith, including regulations requiring the posting or inclusion in advertising material of notices prepared or approved by the Commission and regulations as to filing, approval or disapproval of plans to eliminate or reduce the effects of discriminatory practices. The Commission may authorize its staff to receive, initiate, and seek to carry out investigative duties adopted by the Commission. Such rules and regulations shall be approved by the City Council.

6. To impanel a hearing board to hear complaints, which board shall consist of five (5) hearing officers who shall be members of the Commission nominated by the chair of the Commission and approved by at least a majority, a quorum being present and voting. No member of the hearing board shall have a part in the investigation of a complaint, except as to the issuance of subpoenas or interrogatories and other appropriate legal process.

7. To seek prompt judicial action for appropriate temporary or preliminary relief pending final disposition of a complaint if the Commission concludes that such action is necessary to carry out the purpose of this charter. The commencement of a civil action under this section shall not affect the Commission's continued investigation of any complaint filed under this chapter or the Commission's initiation of a separate civil action pursuant to other subsections of this chapter.

Sec. 8.5-26. - Investigations; Subpoenas.

A. In conducting an investigation or hearing, the Commission shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation or hearing; provided, however, that the Commission first complies with the provisions of the Fourth Amendment to the United States Constitution relating to unreasonable searches and seizures.

B. The Commission may issue subpoenas to compel access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the general courts of justice.

C. Upon written application to the Commission, a respondent shall be entitled to the issuance of a reasonable number of subpoenas subject to the same limitations as subpoenas issued by the Commission. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at the respondent's request.

D. In case of contumacy or refusal to obey a subpoena, the Commission or the respondent may petition for its enforcement in the superior court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

Sec. 8.5-27. - Provisions for Enforcement.

A. Any person who claims to have been aggrieved by an unlawful discriminatory housing practice or who reasonably believes that he will be aggrieved by an unlawful discriminatory housing practice may file a complaint with the City of Durham's Human Relations Commission within one (1) year after the alleged violation occurred or terminated. Complainants shall be in writing, shall state the facts upon which the allegation of any unlawful discriminatory housing practice is based, and shall contain such other information and shall be in such form as the Commission requires. The Commission staff shall assist complainants in reducing complaints to writing and in setting forth the information in the complaint as may be required by the Commission. Within ten (10) days after receipt of the complaint, the Commission shall cause to be served on the respondent, by certified mail or personal service, a copy of the complaint and a notice advising the respondent of his procedural rights and obligations under this chapter; within the same time period, the Commission shall serve on the complainant, by certified mail or personal service, a notice acknowledging the filing of the complaint and advising the complainant of his time limits and choice of forums under this chapter.

B. A respondent may file an answer to the complaint against him within ten (10) days after receiving a copy of the complaint. The complaint and the answer may be amended at any time with leave of the Commission, which shall be granted whenever it would be reasonable and fair to do so. Complaints and answers shall be verified.

C. A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of the investigation, may be joined as an additional or substitute respondent upon the Director sending such person as a respondent, a copy of the complaint and written notice identifying the alleged discriminatory housing practice and advising the respondent of his procedural rights and obligations under this chapter. The notice shall also explain the basis for the Commission's belief that the person to whom the notice is addressed is properly joined as a respondent.

D. Within thirty (30) days after the filing of the complaint, the Commission shall commence an investigation of the complaint to ascertain the facts relating to the alleged unlawful discriminatory housing practice. If the complaint is not resolved before the investigation is completed, upon completion of the investigation, the Commission shall determine whether there are reasonable grounds to believe that an unlawful discriminatory housing practice has occurred or is about to occur. The Commission shall conclude its investigation and make a determination of reasonable cause within one hundred (100) days after the filing of the complaint. If the Commission is unable to complete the investigation and make a determination within one hundred (100) days after the filing of the complaint, the Commission shall notify the complainant and respondent in writing of the reasons for not doing so.

E. 1. At the conclusion of each investigation under this section, the Commission shall prepare a final investigative report containing:

- (a) the names and dates of contacts with witnesses;
- (b) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;
- (c) a summary description of other pertinent records;
- (d) a summary of witness statements, and
- (e) answers to interrogatories.

2. A final investigative report may be amended if additional evidence is later discovered.

3. The Commission shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Commission's investigation, information derived from an investigation and any final investigative report relating to that investigation.

F. If it is decided by the Director or the Commission that there is no reasonable cause to believe that the respondent has engaged or is about to engage in a discriminatory practice in violation of this division, the Director shall issue a short and plain written statement of the facts upon which the director or the Commission has based the no reasonable cause determination, dismiss the complaint, and notify the aggrieved person and the respondent of the dismissal by certified mail or personal service within ten (10) days after making such a determination.

G. If the Director or the Commission determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Director shall immediately issue a charge on behalf of the aggrieved person and shall notify the aggrieved person and the respondent of this determination by certified mail or personal service. Such charge: (1) shall consist of a short and plain statement of the facts upon which the Director has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur; (2) shall be based on the final investigative report; and (3) need not be limited to the facts or grounds alleged in the complaint filed under section 8.5-27(A).

H. Together with the service of the charge, the Director shall provide the aggrieved person and the respondent with the following: (1) information as to how to make an election under section 8.5-32 and the effect of such an election; and (2) a notice of an opportunity for a hearing under section 8.5-29 at a time and place specified in the notice unless that election is made.

Sec. 8.5-28. - Conciliation Procedures.

A. During the period beginning with the filing of the complaint and ending with the filing of a charge or the dismissal of the complaint by the Director or Commission, the Director or Commission shall to the extent feasible, attempt to conciliate the complaint.

B. In conciliating a complaint, the Director or Commission will attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as will assure the elimination of discriminatory housing practices, or the prevention of their occurrences, in the future.

C. A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Director or Commission.

D. The terms of a settlement of a complaint will be reduced to a written conciliation agreement. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. Each conciliation agreement shall be made public unless the complainant and the respondent otherwise agree and the Commission determined that disclosure is not required to further the purposes of this charter.

E. Nothing said or done in the course of conciliation under this chapter may be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned.

F. A conciliation agreement negotiated by the Director or Commission may include but is not limited to the:

1. Affirmative or prohibitory language regarding the sale, exchange, lease, rental, assignment, or sublease of real property to a person;
2. Extension to all persons of the full and equal enjoyment of the advantages, facilities, privileges and services of the respondent;
3. Reporting as to the manner of compliance;
4. Posting of notices in conspicuous places in the respondent's place of business in a form prescribed by the Commission; and
5. Payment to the complainant of actual damages, including compensation for humiliation or embarrassment, and reasonable attorney fees.

G. At any time, but no later than one (1) year from the date of a conciliation agreement, the Director or Commission shall investigate whether the terms of the agreement are being complied with by the respondent. Upon deciding that the terms of the agreement are not being complied with by the respondent, the Director or Commission shall take informal action to seek voluntary compliance with the agreement. If informal action does not result in compliance, the Director or Commission, shall file a civil action for the enforcement of the terms of the conciliation agreement.

Sec. 8.5-29. - Administrative Hearing.

1. Unless the Director or the Commission has decided that there is no reasonable cause to believe that a discriminatory practice has occurred or is about to occur, an election has been made under section 8.5-32, or a conciliation agreement has been negotiated under section 8.5-28, a Hearing Board, as constituted under subsection 8.5-25(6), shall hold a hearing, after proper notice, under the rules and procedures adopted by the Commission under this chapter.

2. At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross examine witnesses, and obtain the issuance of subpoenas under section 8.5-26. any aggrieved person may intervene as a party in the proceeding. The Commission shall be considered a party in the proceeding without the need to intervene and shall maintain the proceeding on behalf of the aggrieved party.

3. The Director shall have the authority to promulgate rules and regulations providing for expedited discovery.

4. The Hearing Board shall have the authority to conduct hearings under this section, issue subpoenas under section 8.5-26, conciliate all matters in controversy and enter into binding conciliation agreements, make final findings of fact and conclusions of law, and enter all orders necessary to the conduct of hearings held under this section.

5. If the Hearing Board determined as a result of the hearing that there is no reasonable cause to believe that the respondent has engaged in a discriminatory practice under this chapter, the Hearing Board shall state its findings of fact and conclusions of law and shall issue an order dismissing the complaint and furnish a copy of the order to the complainant, the respondent, and such person(s) as the Commission deems proper.

6. If the Hearing Board finds that a respondent has engaged or is about to engage in a discriminatory housing practice, it shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent:

- (a) In an amount not exceeding ten thousand dollars (\$10,000.00) if the respondent has not been adjudged to have committed any prior discriminatory housing practices;

- (b) In an amount not exceeding twenty-five thousand dollars (\$25,000.00) if the respondent has been adjudged to have committed one (1) other discriminatory housing practice during the five-year period ending on the date of the filing of this charge; and
- (c) In an amount not exceeding fifty thousand dollars (\$50,000.00) if the respondent has been adjudged to have committed two (2) or more discriminatory housing practices during the seven-year period ending on the date of the filing of this charge;

If the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice then the civil penalties set forth in subparagraphs (b) and (c) may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

7. The Hearing Board shall commence the hearing under this section no later than one hundred twenty (120) days following the issuance of the charge, unless it is impracticable to do so. If the Board is unable to commence the hearing within one hundred twenty (120) days after the issuance of the charge, it shall notify the Director, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

8. The Hearing Board shall make findings of fact and conclusions of law within thirty (30) days after the end of the hearing under this section, unless it is impracticable to do so. If the Board is unable to make findings of fact and conclusions of law within such period, or any succeeding thirty (30) day period thereafter, the Board shall notify the Director, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

9. The Director shall have the authority to review any finding, conclusion, or order issued under this section not later than thirty (30) days after the finding, conclusion, or order is issued, otherwise the finding, conclusion, or order becomes final.

10. The Director shall cause any findings of fact and conclusion of law made with respect to any final orders for relief under this section, together with a copy of such order, to be served upon each aggrieved person and each respondent in the proceeding.

11. The Commission shall make final administrative disposition of a complaint within one (1) year of the date the complaint is filed, unless it is impracticable to do so. If the Commission is unable to do so, it shall notify the complainant and respondent in writing of the reasons for not doing so.

Sec. 8.5-30. - Judicial Review of Committee Orders.

1. Any party aggrieved by a final order for relief under this division granting or denying in whole or in part the relief sought may obtain a review of such order under Article 4 of Chapter 150B of the North Carolina General Statutes.

2. Notwithstanding such chapter, petitions for judicial review shall be filed in the Superior Court of Durham County. The trial court judge may grant to the petitioner, or to any other party, such temporary relief, restraining order, or other order as the court determined is just and proper and the trial court judge may affirm, modify, or set aside, in whole or in part, the committee's order, or remand the order for further proceedings and enforce the order to the extent that the order is affirmed or modified.

3. The term "Agency," whenever used in Article 4 of Chapter 150B of the North Carolina General Statutes, shall mean the Durham Human Relations Commission.

Sec. 8.5-31. - Enforcement of Commission Orders.

1. If, within sixty (60) days after entry of an order of the Commission, a respondent has neither complied with nor sought review of such order, any aggrieved person or the Commission may apply to the Superior Court of Durham County for any order of the court enforcing the order of the Commission.

2. If, within thirty (30) days after the court's receipt of the petition for enforcement of the Commission's order, or within such additional time as the court may allow, the Commission shall transmit to the court the original or a certified copy of the entire record of the proceedings leading to the order. With the permission of the court, the record may be shortened and testimony submitted by tape recording, by stipulation of all parties. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional cost as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

3. The hearing on the petition for enforcement of the Commission's order shall be conducted by the court without a jury. The court shall hear oral arguments and receive written briefs, but shall take no evidence not offered at the Commission's hearing; except that in cases of alleged irregularities in proceedings before the Commission not shown in the record, testimony thereon may be taken by the court; and except that where no record was made of the proceedings or the record is inadequate, the judge in his discretion, may hear all or part of the matter de novo.

4. The court shall issue the order requiring compliance with the Commission's order, unless it finds that enforcement of the Commission's order would prejudice substantial rights of the party against whom the order is sought to be enforced, because the Commission's findings, inferences, conclusions or decisions are:

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the Commission; or
- (c) Made upon unlawful procedure or;
- (d) Affected by other error of law; or
- (e) Unsupported by substantial evidence in view of the entire record as submitted;
or
- (f) Arbitrary or capricious.

5. If the court declines to enforce the Commission's order for one of the reasons specified in paragraph (4) of this section, it shall either:

- (a) Dismiss the petition; or
- (b) Modify the Commission's order and enforce it as modified; or
- (c) Remand the case to the Commission for further proceedings.

6. Any party to the hearing on the petition for enforcement of the Commission's order may appeal the court's decision to the appellate division under the rules of procedure applicable to other civil cases.

Sec. 8.5-32. - Election Process.

After the Director or Commission makes a finding of reasonable cause, the aggrieved person or the respondent has the right to elect to proceed immediately to the Durham County Superior Court rather than proceed through the administrative hearing process. The election must be submitted in writing to the Durham Human Relations Department within twenty (20) working days after the receipt by the electing person of service of the Commission's decision. The person making the election shall give the notice of doing so to all other complainants and respondents to whom the charge relates.

If an election is made under this subsection, the Commission shall no later than sixty (60) days thereafter, commence a civil action in the Durham County Superior Court in its own name on behalf of the complainant. In such an action, the Commission shall be represented by an attorney employed by the City of Durham at the City's expense. If the court, in such an action, finds that the respondent has engaged in or is engaging in a discriminatory housing practice charge in the complaint, the court may enjoin the respondent from engaging in such discriminatory housing practice, award special damages, actual damages and punitive damages.

Sec. 8.5-33. - Private Right of Action.

The complainant has a private right of action under the Civil Rights Act of 1968, as amended, and under this chapter. The complainant shall file a civil action under this chapter not later than one (1) year after an alleged discriminatory housing practice has occurred or terminated. The computation of such one (1) year period shall not include any time during which all administrative proceeding under this ordinance was ending with respect to a complaint or charge under this ordinance based upon such discriminatory housing practice. The foregoing sentence shall not apply to actions arising from a breach of a conciliation agreement.

If the court finds that the respondent has engaged in or is engaging in an unlawful housing practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful housing practice, award special damages, actual damages and punitive damages. The court, in its discretion, may allow the prevailing party in any action or proceeding under this chapter, other than the Commission, a reasonable attorney's fee and costs.

Sec. 8.5-34 - Records.

(a) Every person subject to this chapter shall make, keep and preserve records relevant to the determination of whether discriminatory practices have been or are being committed, such records being maintained and preserved in a manner and to the extent required under the Civil Rights Act of 1968, as amended, and any regulations promulgated thereunder. Nothing in this chapter shall be interpreted to require the making, keeping and preserving of records other than and except as required under the Federal Act of 1968, 42 U.S.C.A. Section 3601 et seq., and any regulations promulgated thereunder.

(b) In connection with a complaint filed under this chapter, the Commission or Commission members upon complete disposition of the complaint, shall have access at any reasonable time to premises, records and documents relevant to the complaint, and the right to examine, photograph and copy evidence, in compliance with the North Carolina Rules of Civil Procedure.

(c) Neither a complaint filed with the Commission pursuant to this chapter nor the results of the Commission's investigations, discovery or attempts at conciliation, in whatever form prepared and preserved, shall be subject to inspection, examination or copying under Chapter 132 of the General Statutes of North Carolina. Each conciliation agreement shall be public record unless the aggrieved person and respondent otherwise agree and either the Director or the Commission determine that disclosure is not required to further the purposes of this chapter.

(d) The provisions of Article 33C of Chapter 143 of the General Statutes of North Carolina shall not be applicable to the activities of the Commission to the extent that it is receiving a complaint or conducting an investigation, discovery or conciliation pertaining to a complaint filed pursuant to this chapter. Hearings before the Hearing Board pursuant to section 8.5-29 hereof shall not be private, but shall be public.

(e) Nothing said or done in the course of such conciliation may be made public or used as evidence in a subsequent proceeding without the written consent of the person concerned.

Sec. 8.5-35. - 8.5-50 - Reserved.

Section 5. This ordinance shall become effective upon adoption.

APPROVED BY
CITY COUNCIL

APR 17 1995

D. Ann Gray
DEPUTY CITY CLERK

**Appendix: Fair Housing Act
Sections: 804; 805; and 806**

**Fair Housing Act
Sections: 804; 805; and 806**

- (1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or
- (2) he has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or
- (3) he is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

Sec. 804. [42 U.S.C. 3604] Discrimination in sale or rental of housing and other prohibited practices

As made applicable by section 803 of this title and except as exempted by sections 803(b) and 807 of this title, it shall be unlawful--

- (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.
- (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.
- (c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.
- (d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
- (e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.
- (f)
 - (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--
 - (A) that buyer or renter,
 - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - (C) any person associated with that buyer or renter.
 - (2) To discriminate against any person in the terms, conditions, or privileges of sale or

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5)

(A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.

(C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

(D) Nothing in this title shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6)

(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 810(f)(3) of this Act to receive and process complaints or otherwise engage in enforcement activities under this title.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this title.

(7) As used in this subsection, the term "covered multifamily dwellings" means--

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this title shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this title.

(9) Nothing in this subsection requires that a dwelling be made available to an individual

rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of--

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes--

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after the date of enactment of the Fair Housing Amendments Act of 1988, a failure to design and construct those dwelling in such a manner that--

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

Sec. 805. [42 U.S.C. 3605] Discrimination in Residential Real Estate-Related Transactions

(a) In General.--It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Definition.--As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance--

(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

(c) Appraisal Exemption.--Nothing in this title prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

Sec. 806. [42 U.S.C. 3606] Discrimination in provision of brokerage services

After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, handicap, familial status, or national origin.

Sec. 807. [42 U.S.C. 3607] Religious organization or private club exemption

(a) Nothing in this subchapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this subchapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(b)

(1) Nothing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this title regarding familial status apply with respect to housing